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GLOBAL RESTRUCTURING & INSOLVENCY GUIDE

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TRANSACTIONAL POWERHOUSE

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Welcome to the 7th edition of the Global Baker McKenzie Restructuring & Insolvency Guide. The Guide has been compiled by Baker McKenzie lawyers experienced in the practical aspects of restructuring and insolvency. It should provide you with a helpful reference tool to understand the numerous insolvency and restructuring regimes that may affect your business. In this edition, we also answer the questions we most frequently receive regarding the impact of COVID-19 on the insolvency landscape.

Our lawyers have been advising on some of the largest and most complex multijurisdictional restructurings, recoveries and insolvencies for many years. Bringing together experts from a variety of disciplines, the Restructuring & Insolvency Group at Baker McKenzie provides a full service offering. In addition to our dedicated restructuring lawyers, our team will call on the expertise of colleagues in our wider group, including specialists in finance, capital markets, M&A, employment, tax, dispute resolution, real estate, intellectual property and international commercial & trade. Together we apply our experience in providing complete cross-border restructuring and recovery solutions.

As ever, a brief overview such as this cannot deal with some of the more detailed issues or circumstances that might arise in particular settings. Please do not hesitate to follow up with us if we can be of further assistance. Contact details for our lawyers in each country can be found at the end of the Guide.

Please visit our R&I blog at restructuring.bakermckenzie.com for further insights from our group.

ARGENTINA

ARGENTINA	Extrajudicial voluntary agreement	Reorganization proceedings	Liquidation bankruptcy
INITIAL CONSIDERATIONS			
Can you take security over all types of assets, including working capital?	Generally yes, before filing for the reorganization or the ruling setting forth the start of the liquidation bankruptcy.	After the beginning of the reorganization proceedings, no further security interests can be granted over the assets of the debtor for credits due before the beginning of the reorganization proceedings. The debtor can grant security interests for new creditors after the start of the reorganization proceedings.	As from the start of the liquidation proceeding, no further security interests can be granted over the assets of the debtor.
What is the nature of the process?	It is an alternative to the reorganization proceedings, by means of which the debtor enters into an out-of-court settlement with its creditors. The settlement is filed with a court for its approval. Once the approval is granted, the agreement shall be enforceable vis-a-vis all creditors, even those who did not participate in it.	Court process leading to a composition agreement with creditors in order to avoid the debtor's liquidation. The debtor is allowed to restructure its debt if the appropriate requirements are met.	Bankruptcy basically means judicial liquidation of the legal entity. Bankruptcy is only reached through the intervention of the commercial court corresponding to the jurisdiction where the company is registered. There is no minimum number of creditors. For bankruptcy declaration purposes, just one unpaid creditor is enough, or the debtor's company may even request its own bankruptcy. Upon bankruptcy declaration, all the debtor's assets are liquidated and funds are duly distributed among the creditors. The bankrupt entity shall be managed by the "síndico" or "bankruptcy liquidator" under the supervision of the competent court.

ARGENTINA

	Extrajudicial voluntary agreement	Reorganization proceedings	Liquidation bankruptcy
What is the solvency requirement?	The debtor shall evidence either financial-economic difficulties of a general nature, or the suspension of payments of current, due and outstanding debts regardless of the cause or nature of the debt.	The prerequisite to file for reorganization proceedings set forth by Bankruptcy Law No. 24,522 ("BL") and its amendments, is the suspension of payments of current, due and outstanding debts regardless of the cause or nature of the debt. Reorganization includes all assets of the insolvent company (i.e., the debtor's whole estate), with few exceptions set forth in the BL. Corporations must file for reorganization through its legal representative and such resolution must be ratified by a shareholders' meeting within the following 30 days as of the filing.	In general terms, the basis for becoming bankrupt is that liabilities exceed the amount of assets and that the debtor has so-called "cessation of payments" status ("estado de cesación de pagos"). The court shall declare the bankruptcy and determine the starting date of the cessation of payment status ("Insolvency Date"), which shall precede the bankruptcy declaration date. The debtor is able to declare its own "cessation of payments" status.
Is there a requirement to demonstrate COMI ("centre of main interests")?	In the case of debtors domiciled abroad, the competent court to intervene in the approval of the extrajudicial voluntary agreement shall be that of the place of its administration, or otherwise, the place of its main activity, as the case may be.	In the case of debtors domiciled abroad, the competent court to intervene in the reorganization proceedings shall be that of the place of its administration, or the place of its main activity, as the case may be.	In the case of debtors domiciled abroad, an Argentine court will be entitled to declare bankruptcy on a foreign entity only regarding the assets existing within the territory of the Argentine Republic.
Is restructuring of both secured and unsecured claims possible?	Only if all unsecured creditors approve the proposal agreement.	Only if all unsecured creditors approve the proposal agreement.	N/A.
Is there a classification of creditors and shareholders?	The debtor must file with the court a categorization proposal of registered creditors, which must be made considering the amount of their credits, the existence of security interests and the nature and cause of the credits. The proposal must have at least three categories: (i) unsecured commercial creditors, (ii) unsecured labor creditors, and (iii) secured creditors.	Idem extrajudicial voluntary agreement.	N/A.
Is there a requirement for voting approvals by shareholders?	The approval of the shareholders is not required for the agreement. Nevertheless, the governing body (e.g., shareholders' meeting) must approve the filing with the court of the extrajudicial voluntary agreement.	The approval of the shareholders is not required for the agreement. Nevertheless, the governing body (e.g., shareholders' meeting) must approve the filing with the court of the reorganization proceeding.	If the debtor files for its own bankruptcy, the same approval as in the reorganization proceedings is required.

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Is there a requirement for voting approvals by shareholders' creditors?	After the filing of the trustee's report, the judge will render a decision taking into account the origin of the creditors' claims. Shareholders whose credits have been approved can vote, with the exception of those shareholders who are the main controllers of the company. The main controllers are, for example, those shareholders who can directly or indirectly control the debtor (e.g., those who own more than 50% of the shares).	Shareholders' creditors, whose credits have been approved by the judge, can express their approval of the proposal, with the exception of those shareholders who are the main controllers of the company. The main controllers are, for example, those shareholders who can exercise the social will by themselves (e.g., those who own more than 50% of the shares).	N/A.
Is there an ability to bind minority dissenting creditors?	If the agreement is approved by the court, it will be enforceable vis-a-vis all unsecured creditors of the debtor, including dissidents or those who were not involved in the agreement.	If the agreement is approved by the court, it will be enforceable vis-a-vis all unsecured creditors of the debtor, including dissidents or those who were not involved in the agreement.	N/A.
COMMENCING THE PROCESS			
Who can commence?	The legal representative of the debtor can commence the process with the previous order of the board of directors or the administrative body of the company.	The legal representative of the debtor can commence the process with the previous order of the board of directors or the administrative body of the company.	The bankruptcy of the debtor could be declared: (i) based on the failure of the reorganization proceeding, (ii) upon request of the debtor, (iii) upon request of any creditor. In case the debtor requests its own bankruptcy, the same provisions as in the case of the reorganization proceedings shall apply.
Is shareholders' consent required to commence proceedings?	The approval of the shareholders is not required for the agreement. Nevertheless, the governing body (e.g., shareholders' meeting) must approve the filing of the extrajudicial voluntary agreement with the court.	Corporations must file for reorganization through their legal representative and such resolution must be ratified by a shareholders' meeting within the following 30 days as of the date of filing.	Corporations that file for voluntary bankruptcy proceedings through their legal representative require ratification by a shareholders' meeting within the following 30 days as of the date of filing.

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	Extrajudicial voluntary agreement	Reorganization proceedings	Liquidation bankruptcy
Is there an ability to consolidate group estates?	Yes. When two or more natural or legal persons permanently integrate an economic group, they can jointly file with the court the extrajudicial voluntary agreement by stating the facts on which they base the existence of the group and its externalization. The request must include all the members of the group without exclusions. The judge may dismiss the petition if it considers that the existence of the group has not been proved.	Yes. When two or more natural or legal persons permanently integrate an economic group, they can jointly request their reorganization proceedings by stating the facts on which they base the existence of the group and its externalization. The request must include all the members of the group without exclusions. The judge may dismiss the petition if it considers that the existence of the group has not been proved.	No. However, the liquidation bankruptcy can be extended to the group estates in case of fraud.
Is there any court involvement?	The court does not intervene until the debtor files the agreement with its creditors for approval.	Yes. Once the legal requirements are fulfilled in due time, the court must enter a judgment stating the opening of the reorganization proceedings and set all the corresponding dates for the different stages of the process.	Yes. Bankruptcy is only declared with the intervention of the commercial court.
Who manages the debtor?	The debtor retains the administration of the estate.	The debtor retains the administration of the estate, under the supervision of the trustee.	The bankruptcy liquidator retains the administration of the estate.
What is the level of disclosure of the process to voting creditors?	1. Notices are published in the official gazette stating that the debtor has filed an extrajudicial voluntary agreement for judicial approval in this regard. 2. Based on the information creditors have about the debtor, they can negotiate the agreement before signing it.	1. Notices are published in the official gazette stating that the debtor has requested a reorganization proceeding. 2. Based on the information creditors have about the debtor and also that provided by the debtor, the trustee has to file its report before appointing the agreement so that creditors know the financial situation of the debtor.	1. Notices are published in the official gazette stating that the debtor has filed for a liquidation bankruptcy. 2. There is no agreement in this case; nevertheless, the trustee has to file its report regarding the financial situation of the debtor.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Insurance companies and financial institutions are not eligible for reorganization proceedings, nor can they enter into an extrajudicial voluntary agreement.	Insurance companies and financial institutions are not eligible for reorganization proceedings.	Although financial institutions are not eligible for reorganization proceedings, they can go into liquidation bankruptcy.

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How long does it generally take for a creditor to commence the procedure?	The time to request the judicial approval will depend on the time spent obtaining the consent of all creditors, pursuant to the agreement specifications. It will also depend on the time spent on complying with all the requirements to file the agreement with court. Once the agreement is filed, edicts must be published for five days in a widely published newspaper, according to the specific requirements. The creditors listed by the debtor and those who summarily prove to have been omitted from the list may oppose the agreement within the following 10 days from the last day of publication of the edicts.	It depends on the time spent on complying with all the requirements to file the agreement with the court. Generally, a few weeks.	It depends on the time spent on complying with all the requirements to file the agreement with the court. Generally, a few weeks. If requested by a creditor, it can take between six months to three years until the liquidation bankruptcy is declared.
EFFECT OF PROCESS			
Does the debtor remain in possession with continuation of incumbent management control?	Yes. The debtor retains the administration of its estate.	Yes. The debtor retains the administration of its estate under the supervision of the trustee.	No. The trustee retains the administration of the company's estate.
What is the stay/moratorium regime (if any)?	There is no stay protection as the extrajudicial voluntary agreement is entirely private until the request for judicial approval. However, as explained above, once the approval is granted, the agreement shall be enforceable vis-a-vis all creditors, even those who did not participate in the process or did not agree on the extrajudicial voluntary agreement term.	Once the judge declares the beginning of the reorganization proceeding, the debtor obtains immediate protection from actions against its assets and operations. By operation of the automatic stay, creditors are prohibited from attempting to collect pre-petition debts of the debtor, seize its assets or otherwise exercise control over its property. For example, the commencement or continuation of litigation against the debtor or an attempt by a creditor to foreclose the property of the debtor is prohibited by the automatic stay.	N/A.
Is there a provision for debtor-in-possession super priority financing?	No.	No.	No.

ARGENTINA

	Extrajudicial voluntary agreement	Reorganization proceedings	Liquidation bankruptcy
Can the procedure be used to implement a debt-to-equity swap?	Yes. The proposal of the debtor can entail the possibility of offering shares to the creditors to cancel the debt.	Yes. The proposal of the debtor can entail the possibility of offering shares to the creditors to cancel the debt.	N/A.
Are third-party releases available?	No.	No.	No.
Are the proceedings recognized abroad?	No.	No.	No.
Has the UNCITRAL Model Law been adopted?	No.	No.	No.
How long, complex and expensive is the process?	The term of these proceedings depends on the challenges to the proposal, if any. The court tax amounts to 0.75% of the added amount of all admitted credits.	It is a complex process. The court shall order the commencement of the process. The creditors have to request to be admitted as such in the proceeding. The trustee has to file several reports with the court. The debtor has an exclusivity period to present to each category of creditors a plan of reorganization or payment proposal ("Proposal"). The Proposal must be approved by the majority of the unsecured creditors (i.e., more than 50% of the unsecured creditors included in each category accepted by the court), whose credits represent at least two-thirds of the registered credits for each category of creditors. Should the debtor obtain the above-mentioned legal majorities regarding each category, the court declares the existence of a creditors' payment agreement ("Agreement"). The court tax amounts to 0.75% of the added amount of all admitted credits.	The court shall order the commencement of the process. The creditors have to request to be admitted as such in the proceeding. The liquidator has to file several reports with the court. Once the credits are admitted, the liquidator shall proceed to distribute the proceeds among the creditors The court tax amounts to 3% of the amount of the distribution performed by the liquidator.
Is there a mandatory set-off of mutual debts on insolvency?	No.	No.	No.

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	Extrajudicial voluntary agreement	Reorganization proceedings	Liquidation bankruptcy
Can a debtor continue to carry on business during insolvency proceedings?	Yes, as it retains the administration of its estate.	Yes, as it retains the administration of its estate.	No. However, there are two exceptions to this rule. First, provided that continuation of business is extremely necessary to protect the debtor's assets, the liquidator will continue managing the business for a limited period of time. Second, if two-thirds of the employees create a "workers cooperative", they can request the judge to allow them to continue with the business.
OTHER FACTORS			
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	There are no restrictions during the extrajudicial voluntary proceedings.	The debtor keeps the administration of its assets under the surveillance of the trustee and of the provisory creditors committee. However, the administration is restricted and certain acts are forbidden, as follows: (i) The debtor shall not dispose of its assets without consideration or perform an act that affects or modifies the creditors' situation. (ii) A judicial authorization is required for: -acts related to goods or assets subject to registration -the sale or lease of the debtor's property under concern -the issuance of bonds, guaranteed negotiable debt	There is a general loss of the ability to perform There is a general loss of the ability to perform commercial acts. Any commercial act performed by the debtor or on its behalf after the bankruptcy ruling shall be considered null and void.

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		Said authorization shall be requested to the court, which must first discuss the request with the trustee and the creditors committee. All acts performed in violation of the above-mentioned rules shall become null and void vis-a-vis the creditors. The administration of the company may revert to the trustee, by means of a court order, should any of the above-mentioned limitation be violated. However, and depending on the circumstances, the court may restrict the administration of the company by appointing a co-administrator or a controller.	
What is the order of priority of claims?	N/A.	In general, there are two different priorities: (i) over a specific asset and (ii) over the general estate of the debtor. With regards to (i), priority is given to (a) creditors related to the preservation of such specific asset, (b) labor creditors over the machines and goods that the employees used and produced, (c) the taxes owed over such assets, (iv) mortgages and pledges over the assets they secure, etc. With regards to (ii), priority is given to (a) labor credits in general, (b) social security system credits, and (c) tax authorities' credits. All other unsecured creditors have no priority.	Idem reorganization proceedings.

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Are there any pension liabilities?	No, since the employment agreements remain fully valid.	Idem extrajudicial voluntary agreement.	The bankruptcy declaration by itself does not imply the termination of employment agreements. Termination will occur 60 days after the bankruptcy declaration provided there is no continuation of the business as explained above. If termination occurs, workers will only receive payment of regular compensation under the Labor Act, but with the priority explained above.
Is it possible to challenge prior transactions?	N/A.	Yes. The trustee and the creditors can challenge prior transactions if the third party knew the "cessation of payment status" of the debtor at the time of the transaction and if said transaction was to the detriment of the creditors' interests.	Idem reorganization proceedings.
COVID-19			
Is state support for distressed businesses available?	No. The only governmental assistance provided is a moratorium for tax and social security debt.	Idem extrajudicial voluntary agreement.	No.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	No.	No.	No.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	No.	No.	No.

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AUSTRALIA	Creditors Scheme of Arrangement	Receivership
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	While not typically a part of the implementation of a creditors' scheme of arrangement, more generally a creditor is able to take security over all types of assets, including working capital. This is most commonly effected through a general security deed, subsequently registered on the Personal Property Securities Register granting the secured creditor security over "all present and after acquired property" ("**ALL PAP**") of the grantor of the security	A creditor is able to take security over all types of assets, including working capital. This is most commonly effected through a general security deed, subsequently registered on the Personal Property Securities Register granting the secured creditor security over ALL PAP of the grantor of the security. Having this kind of security is typically a prerequisite to conducting an effective receivership.
What is the nature of the process?	A creditors' scheme of arrangement is a compromise or arrangement between a company and its creditors (or some of them) effected pursuant to the process prescribed in Chapter 5.1 of the Corporations Act 2001 (Cth) ("Corporations Act"). A company may be reorganized or restructured through a scheme of arrangement. This process requires: The Australian Securities & Investments Commission (ASIC) being provided with a draft of the scheme documents to be sent to affected creditors (colloquially referred to as a scheme booklet) at least 14 days in advance of the initial or first court hearing: • an initial or first court hearing at which orders are made convening a meeting or meetings of the affected creditors and to seek approval of the material to be dispatched to those creditors • a meeting or meetings of the affected creditors be held to vote on the proposed scheme of arrangement • a second court hearing to approve the proposed scheme of arrangement, assuming it has been passed by the requisite majority at the meeting or meetings of affected creditors	A receiver (often appointed as a receiver and manager) is the most common form of what is referred to as a controller in the Corporations Act. A controller can also include a mortgagee in possession or their agent. A receiver is generally privately appointed by a secured creditor over some or all of the property of the company that is subject to their security interest. The purpose is to realize the secured property and apply it in reduction of the secured debt. A receiver may also be appointed by a court. Procedurally, the appointment of a receiver is effected by the execution of a deed of appointment by the secured creditor and the proposed receiver, after any necessary procedural formalities arising from the underlying security agreement or applicable legislation have been complied with. It is also standard practice for the secured creditor to indemnify the receiver appointed for any liabilities of the receiver incurred during the course of the receivership. This indemnity is usually set out in a separate deed of indemnity.

 AUSTRALIA	Creditors Scheme of Arrangement	Receivership
	• the lodgment of the orders made at the second court hearing with ASIC in order for the creditors' scheme of arrangement to become effective	A receiver must be a registered liquidator with ASIC. Additionally, there are a range of circumstances disqualifying a person from accepting an appointment as a receiver, which are designed to ensure that receivers are appropriately independent. It is usual to have two or more receivers appointed jointly and severally, to ensure appropriate continuity in the event of absence or ill health.
What is the solvency requirement?	There is no requirement of insolvency for a debtor company to pursue a creditors' scheme of arrangement	There is no insolvency requirement for the appointment of a receiver. A receiver can be appointed by the secured party over the property the subject of their security when permitted by the terms of that security. The appointment of a receiver will often follow payment default. It is also common for a receiver to be appointed if the debtor company it has security over goes into liquidation or voluntary administration.
Is there a requirement to demonstrate COMI ("centre of main interests")?	Broadly, only Australian incorporated companies or foreign companies that are registered in Australia may be the subject of a scheme of arrangement. Australia is party to the UNCITRAL Model Law on Cross-Border Insolvency ("**Model Law**") which allows for insolvency proceedings to be classified as a "foreign non-main proceeding" or a "foreign main proceeding". We discuss this further below in connection with cross-border situations.	No. Any corporation (domestic or foreign) can have its Australian assets placed into Australian-regulated receivership. Australia is party to the Model Law, which allows for insolvency proceedings to be classified as a "foreign non-main proceeding" or a "foreign main proceeding." We discuss this further below in connection with cross-border situations.
Is restructuring of both secured and unsecured claims possible?	Yes. A creditors' scheme of arrangement is able to deal with both secured and unsecured claims.	No. Receivers only deal with the secured claims of the secured creditor who appointed them (although may continue to transact with certain unsecured creditors as part of the ongoing conduct of the company's business in receivership). However, a restructure of both secured and unsecured debt of a company can be undertaken by a receivership in combination with a contemporaneous voluntary administration.
Is there a classification of creditors and shareholders?	Yes. In a creditors' scheme of arrangement, claims are compromised by class (e.g., senior secured creditors only, or particular types of unsecured creditor, such as insurance policyholders), and voting to approve a scheme of arrangement must also be by each affected class of creditor.	No. Some recoveries from the realization of secured assets are not available to secured creditors in a receivership. These are touched on below

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	Creditors Scheme of Arrangement	Receivership
Is there a requirement for voting approvals by shareholders?	No. However, certain companies (particularly publicly listed companies) and certain restructuring transactions (such as a debt to equity conversion) may indirectly require shareholder approval for particular aspects of the overall restructure, for instance, to approve a dilutive share issue for purposes of applicable listing rules or to waive the takeover/mandatory bid requirements of the Corporations Act.	No.
Is there a requirement for voting approvals by shareholders' creditors?	Only if the creditor claims of those shareholders are part of a specific class being compromised by the proposed creditors' scheme of arrangement. If shareholder creditors are being treated differently under the scheme from other creditors, those shareholder creditors may also vote to approve the scheme in a separate class.	No.
Is there an ability to bind minority dissenting creditors?	Yes. In order for the creditors' scheme of arrangement to be approved — and so have a binding effect on dissenting creditors — greater than 50% of the scheme creditors present at the scheme meeting must vote in favor of the scheme and this majority must also constitute at least 75% of the total claims and debt of the creditors present (in person or by proxy) and voting at the scheme meeting.	N/A. The receiver only has the ability to deal with the property subject to the security of the secured creditor.
COMMENCING THE PROCESS		
Who can commence?	The company acting by its directors initiates the creditors' scheme of arrangement. This may be consequent to an agreement reached with some of the company's creditors.	A secured creditor can appoint a receiver over the property subject to their security in order to discharge the outstanding debt. In limited circumstances, the court may appoint a receiver.
Is shareholders' consent required to commence proceedings?	No.	No.

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	Creditors Scheme of Arrangement	Receivership
Is there an ability to consolidate group estates?	No. The creditors' scheme of arrangement can only apply to the assets of the entity of the creditors. It is common, however, for group companies to collectively propose interrelated schemes of arrangement, in substantially identical terms. Also, it is common for a parent company to propose a scheme of arrangement that contains various releases of claims by affected creditors as against not only the parent but also against its subsidiaries.	No.
Is there any court involvement?	Yes. There are two court hearings to effect a creditors' scheme of arrangement as follows. **First Court Hearing** The court may, if satisfied, make orders on the application of the company for the convening of meetings of the relevant class or classes of creditors for the purpose of considering the proposed creditors' scheme of arrangement ("**First Court Hearing**"). After the First Court Hearing the company will facilitate the holding of the meeting or meetings ("**Scheme Meetings**") of the class or classes of relevant creditors, as the case may be, to vote on the proposed creditors' scheme of arrangement. **Second Court Hearing** Assuming the requisite creditor approvals are obtained at the Scheme Meetings (and other conditions precedent are satisfied), the court conducts a second hearing at which the court makes orders effecting the creditors' scheme of approval ("S**econd Court Hearing**"). The Second Court Hearing involves (broadly speaking) the satisfaction of the technical requirements including the voting thresholds and a consideration of the "fairness" of the creditors' scheme of arrangement.	Usually, private receiverships will not have any court involvement. However, a receiver, like a liquidator and an administrator, can seek directions from the court and is subject to the supervision of the court. In addition, creditors and other persons aggrieved by an act, omission or decision of a receiver can appeal to the court.

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	Creditors Scheme of Arrangement	Receivership
Who manages the debtor?	A company proposing a scheme of arrangement continues under the control of its board of directors — in this sense, it is the only "debtor-in-possession" corporation insolvency procedure available in Australia. It is worth noting that in some instances a company already in voluntary administration or liquidation proposes a scheme of arrangement — in these instances, the administrator or liquidator will have control of the company to the exclusion of the directors.	The receiver has management of the assets of the company subject to the appointing secured creditor's security to which they have been appointed — this is usually the entire assets and undertaking of the company (in which case the receiver will have full management control of the company). It will often be the case that voluntary administration or a liquidation takes place concurrently with receivership, under the control of a separate administrator or liquidator. In the case of a receivership that takes place concurrently with an administration, the receiver will effectively have the benefit of some of the administration moratorium provisions (such as that any landlord of premises occupied by the company cannot take possession of the premises during the period of the administration without the consent of the administrator or the leave of the court), the receiver being personally liable for post-appointment rent if they elect to cause the company to remain in possession. In a concurrent receivership with a voluntary administration, DOCA or winding-up generally: • The receiver will have control of the assets of the company and be responsible for trading on its business. Accordingly, dealings in relation to operational matters (such as continued supply to the company, the continued performance by the company of its contractual obligations) or in connection with the sale of assets, are appropriately conducted by the receiver. Generally speaking, the claims of unsecured creditors are progressed by way of the administration, DOCA or winding-up. Meetings of creditors will be held by the administrator, deed administrator or liquidator, and accordingly proofs of debt and proxies are lodged with the administrator, deed administrator or liquidator, who will adjudicate on creditors' claims.
What is the level of disclosure of the process to voting creditors?	A creditors' scheme of arrangement requires significant disclosures to be made to the creditors to allow informed voting at the Scheme Meetings. Disclosures to creditors are made predominantly through a very detailed scheme booklet, which sets out the proposed scheme, identified benefits of implementation and the associated risks, and includes current audited accounts for the company. This information is first reviewed by both ASIC and by the court (at the First Court Hearing mentioned above), before going to affected creditors.	N/A.

 AUSTRALIA	Creditors Scheme of Arrangement	Receivership
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Australia has special regulations of the financial distress of banks (under the Banking Act 1959 (Cth)) and insurance companies (under the Insurance Act 1973 (Cth)).	Australia has special regulations of the financial distress of banks (under the Banking Act 1959 (Cth)) and insurance companies (under the Insurance Act 1973 (Cth)).
How long does it generally take for a creditor to commence the procedure?	N/A as only the company can apply for a creditors' scheme of arrangement.	Only a secured creditor can commence a receivership, and that can be done relatively quickly after an event of default. An ordinary unsecured creditor remains free to seek to involuntarily liquidate a company that is in receivership (assuming that the company is not already in liquidation or voluntary administration) and receivership does not impose any moratorium on such efforts.
EFFECT OF PROCESS		
Does the debtor remain in possession with continuation of incumbent management control?	Yes, the company continues under the control of its board of directors. As noted above, if formal voluntary administration or liquidation processes are already on foot, then the administrator or liquidator will remain in control during the process to the exclusion of directors.	In relation to the property over which the receiver is appointed by the secured creditor, the debtor will no longer have management control of that property. Management of the debtor does continue in control over any remaining property of the debtor and otherwise (provided the receivership is not ongoing with a concurrent voluntary administration or liquidation, which is commonplace). In instances of concurrent voluntary administration/liquidation and receivership, the management of the debtor will cease to be in control of the debtor (and will be held by the receiver and administrator/liquidator, as explained above).
What is the stay/moratorium regime (if any)?	While there is no automatic stay/moratorium on enforcement or involuntary liquidation against the company while a creditors' scheme of arrangement is being proposed, the debtor may apply to the court for a stay of such proceedings. There is now also, in broad terms, a general moratorium on contract counterparties seeking to terminate contracts with the company on the basis of the company proposing a creditors' scheme of arrangement.	There is no moratorium or stay on the enforcement of claims against the company in receivership. There is now also, in broad terms, a general moratorium on contract counterparties seeking to terminate contracts with the company on the basis of the company having been placed into receivership if such receivership is over effectively the entire of the company's assets and undertaking (which is not always the case).

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	Creditors Scheme of Arrangement	Receivership
Is there a provision for debtor-in-possession super priority financing?	No.	No.
Can the procedure be used to implement a debt-to-equity swap?	Yes — although not expressly part of the scheme of arrangement legislation, schemes involving debt to equity swaps are common.	No.
Are third-party releases available?	No.	No.
Are the proceedings recognized abroad?	Yes, under the Model Law.	No (although receivers may be recognized abroad at general law, as being effectively appointed agents of the company).
Has the UNCITRAL Model Law been adopted?	Yes. Australia adopted the Model Law in 2008 (enacted in the Cross-Border Insolvency Act 2008 (Cth)).	Yes. Australia adopted the Model Law in 2008 (enacted in the Cross-Border Insolvency Act 2008 (Cth)).
How long, complex and expensive is the process?	Generally, the creditors' scheme of arrangement process is considered to be relatively costly and time consuming. It takes around three to four months to complete, assuming that the terms of the proposed creditors' scheme of arrangement have already been negotiated and agreed with key parties (and assuming that no affected party appeals the court's decision to approve the scheme).	The complexity, cost and timetable of the receivership is largely dependent on the nature of the secured property the receiver is appointed over. The more complex the property secured by the creditor, the more lengthy the receivership is likely to be as it will take more time to set off the debt owed to the secured creditor — some receiverships take only a few days, others may take many years.
Is there a mandatory set-off of mutual debts on insolvency?	No, although set-off may be included in the creditors' scheme of arrangement terms.	No, although contractual or general law set-off rights may be available.
Can a debtor continue to carry on business during insolvency proceedings?	The debtor may and usually will continue to carry on business under a creditors' scheme of arrangement, provided no formal insolvency proceedings are on foot.	The business is often carried on by the receiver to the extent necessary to realize the secured assets.

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OTHER FACTORS

	Creditors Scheme of Arrangement	Receivership
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Although insolvent trading claims can only be pursued by a liquidator and not in a creditors' scheme of arrangement, the Australian insolvent trading prohibition drives director behavior when a company is approaching insolvency. Under the Corporations Act, directors have a positive duty to prevent the company from trading while insolvent. If the company incurs a debt while insolvent or becomes insolvent as a result of incurring that debt, and a director at the time the debt is incurred is aware that there are grounds for suspecting the company is insolvent, or a reasonable person in a like position in the company's circumstances would be so aware, that director will have breached their duty by failing to prevent the company from incurring that debt. Insolvent trading can also be a crime where dishonesty is involved. There are only limited defenses available to an insolvent trading claim, including that, when the debt was incurred, the director: • had reasonable grounds to expect, and did expect, that the company was solvent and would remain solvent • had reasonable grounds to believe that a competent and reliable person was fulfilling their obligation to provide adequate information as to whether the company was solvent and would remain solvent, and expected, on the basis of this information, that the company was solvent and would remain solvent • did not take part in the management of the company • took all reasonable steps to prevent the company incurring the debt (including whether the person took steps to appoint an administrator to the company) • is able to rely on the safe harbor provision, section 588 GA of the Corporations Act • the debt was incurred between 25 March 2020 and 24 September 2020 in the ordinary course of the company's business	Although insolvent trading claims can only be pursued by a liquidator and not a receiver, the Australian insolvent trading prohibition drives director behavior when a company is approaching insolvency. Under the Corporations Act, directors have a positive duty to prevent the company from trading while insolvent. If the company incurs a debt while insolvent or becomes insolvent as a result of incurring that debt, and a director at the time the debt is incurred is aware that there are grounds for suspecting the company is insolvent, or a reasonable person in a like position in the company's circumstances would be so aware, that director will have breached their duty by failing to prevent the company from incurring that debt. Insolvent trading can also be a crime where dishonesty is involved. There are only limited defenses available to an insolvent trading claim, including that, when the debt was incurred, the director: • had reasonable grounds to expect, and did expect, that the company was solvent and would remain solvent • had reasonable grounds to believe that a competent and reliable person was fulfilling their obligation to provide adequate information as to whether the company was solvent and would remain solvent, and expected, on the basis of this information, that the company was solvent and would remain solvent • did not take part in the management of the company • took all reasonable steps to prevent the company incurring the debt (including whether the person took steps to appoint an administrator to the company) • is able to rely on the safe harbor provision, section 588 GA of the Corporations Act • the debt was incurred between 25 March 2020 and 24 September 2020 in the ordinary course of the company's business

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	Creditors Scheme of Arrangement	Receivership
What is the order of priority of claims?	N/A — a creditors' scheme of arrangement will only apply to the class or classes of creditors intended to be impacted by the scheme (which is often limited to secured creditors, or particular classes of unsecured creditors).	A receiver only attends to payment of the secured creditor's debt from the proceeds of realization of the secured assets (after paying any prior-ranking claims), returning any surplus to the company, and is not responsible for dealing with the claims of unsecured creditors. It is worth noting that the claims of a secured creditor to assets subject to a "circulating security interest" — usually cash, receivables, inventory and similar assets — is statutorily subordinated to specified employee claims that qualify for priority in a winding-up, being wages and superannuation, leave and redundancy entitlements.
Are there any pension liabilities?	No.	No.
Is it possible to challenge prior transactions?	No.	No.
Is state support for distressed businesses available?	No, although there are instances of such support being provided on an ad hoc basis (see the COVID-19 content below).	No.

Liquidation and voluntary administration/deed of company arrangement

AUSTRALIA

	Liquidation	Voluntary Administration/Deed of Company Arrangement
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Yes. A creditor is able to take security over all types of assets, including working capital. This is most commonly effected through a general security deed, subsequently registered on the Personal Property Securities Register [2] granting the secured creditor security over ALL PAP of the grantor of the security. Doing so opens up the availability of private receivership as a recovery pathway (see separate section on receivership).	Yes. A creditor is able to take security over all types of assets, including working capital. This is most commonly effected through a general security deed, subsequently registered on the Personal Property Securities Register [3] granting the secured creditor security over "all present and after acquired property" of the grantor of the security. Doing so opens up the availability of private receivership as a recovery pathway (see separate section on receivership). • The Personal Property Securities Register is enabled under the Personal Property Securities Act 2009 (Cth). • The Personal Property Securities Register is enabled under the Personal Property Securities Act 2009 (Cth). • Ibid.
What is the nature of the process?	A winding-up (also known as a liquidation) in insolvency is a terminal procedure intended to realize a company's assets and distribute them amongst its creditors in accordance with the priorities in the Corporations Act. For an insolvent company, a winding-up can take the form of either a court-ordered or compulsory winding-up or a creditors' voluntary winding-up. A court-ordered or compulsory winding-up can only be effected by an order of the Federal Court of Australia or the Supreme Courts of the States and Territories of Australia.	The primary objective of a voluntary administration is to provide for the business, property and affairs of an insolvent company to be administered in a way that: • maximizes the chances of the company, or as much as possible of its business, continuing in existence; or • if it is not possible for the company or its business to continue in existence, results in a better return for the company's creditors and shareholders than would result from an immediate winding-up of the company.

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Liquidation

Creditors of the company and certain other eligible applicants can apply to the court to have a company wound up on a range of bases, including insolvency. The most common ground for a winding-up application in insolvency is the company's failure to comply with a creditor's statutory demand for payment, which gives rise to a statutory presumption of insolvency. Prior to COVID-19, failure to comply or apply to a court to set aside the statutory demand within 21 clear days of the statutory demand being issued gave rise to a statutory presumption of insolvency; subsequent to 25 March 2020 that period has been extended to six months. It is still possible to wind a company up based on insolvency by actually proving insolvency.

If the winding-up application is successful, the court will order that the company be wound up. Upon making a winding-up order, the court will appoint a liquidator. The selection of the liquidator can be nominated by the creditor filing the winding-up application by filing a "consent to act" signed by the preferred liquidator or made by the court, so long as the liquidator is a registered liquidator with ASIC.

A creditors' voluntary winding-up usually commences either:

- pursuant to a special resolution of the company's shareholders in circumstances where there is no declaration of solvency made by the directors of the company; or
- as is now very common, by resolution of creditors at the second meeting of creditors held in the voluntary administration of the company (see the section on Voluntary administration/deed of company arrangement).

A liquidator appointed in a creditors' voluntary winding-up must be a liquidator, appropriately qualified and registered with ASIC, and not disqualified from accepting the appointment.

It is usual to have two or more liquidators appointed jointly and severally, to ensure appropriate continuity in the event of absence or ill health.

Voluntary Administration/Deed of Company Arrangement

The voluntary administration process gives a company a short breathing space, during which there is a general moratorium on the enforcement of creditors' claims. It enables the administrator to continue to trade the company's business during the administration period, and for any proposal to rehabilitate the company or otherwise maximize returns to creditors (other than via an immediate winding-up) to be put before creditors and, if approved, implemented via a deed of company arrangement (DOCA). A DOCA will be binding on key stakeholders including the company, its shareholders and its creditors (save for secured creditors who do not vote in favor of the DOCA).

Commencement

A voluntary administration is usually commenced by the directors of a company resolving that, in their opinion, the company is insolvent or is likely to become insolvent at some future time and that an administrator should be appointed.

Although less common, a secured creditor who is entitled to enforce a security interest over the whole or substantially the whole of the property of the company or a liquidator of the company may also appoint an administrator in certain circumstances.

The consent of the proposed administrator must be obtained before the appointment is effective. The administrator must be a registered liquidator with ASIC and must not be disqualified from accepting the appointment under the Corporations Act.

It is usual to have two or more administrators appointed jointly and severally, to ensure appropriate continuity in the event of absence or ill health.

The administrator must investigate the financial situation and affairs of the company and recommend to the company's creditors in the report whether it is in their interests to:

- end the voluntary administration and hand the company back into the control of its directors (which is uncommon and would only be appropriate if the company is solvent)

AUSTRALIA	Liquidation	Voluntary Administration/Deed of Company Arrangement
	A liquidator appointed in a creditors' voluntary winding-up must be a liquidator, appropriately qualified and registered with ASIC, and not disqualified from accepting the appointment. It is usual to have two or more liquidators appointed jointly and severally, to ensure appropriate continuity in the event of absence or ill health.	• have the company enter into a DOCA (if one has been proposed) • have the company wound up by transition to a creditors' voluntary winding-up. The voluntary administration usually ends when creditors resolve at the second meeting of creditors in favor of one of these options or, if the creditors resolve that the company enter into a DOCA, on its execution.
What is the solvency requirement?	Both solvent and insolvent companies can be placed into liquidation (albeit different kinds of liquidation). • A solvent company can be placed into liquidation by resolution of its shareholders, and may also be wound up by court order in certain circumstances (for instance, where the relationship amongst the shareholders has entirely broken down). • An insolvent company can be placed into liquidation either voluntarily or involuntarily (i.e., by court order). See discussion above under the heading 'What is the nature of the process' on these two different procedures.	No, but only Australian incorporated companies may be placed into Australian voluntary administration. Separately, Australia is party to the Model Law which allows for insolvency proceedings to be classified as a "foreign non-main proceeding" or a "foreign main proceeding." We discuss this further below in connection with cross-border situations.
Is there a requirement to demonstrate COMI ("centre of main interests")?	No, but (broadly speaking) only Australian incorporated companies or foreign companies registered or conducting business in Australia may be placed into Australian liquidation. Australia is party to the Model Law, which allows for insolvency proceedings to be classified as a "foreign non-main proceeding" or a "foreign main proceeding." We discuss this further below in connection with cross-border situations.	No, but only Australian incorporated companies may be placed into Australian voluntary administration. Separately, Australia is party to the UNCITRAL Model Law on Cross-Border Insolvency - this facilitates recognition of foreign rehabilitation proceedings in this jurisdiction.

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	Liquidation	Voluntary Administration/Deed of Company Arrangement
Is restructuring of both secured and unsecured claims possible?	Broadly, no. A liquidation of a company is a terminal process that does not allow for restructuring of secured and unsecured claims. That said, a liquidator may take steps to put in place a scheme of arrangement or compromise in relation to some or all of the claims against the insolvent company (which might provide for a restructuring of either secured or unsecured claims). A liquidator can also appoint an administrator to the company with a view to a restructuring, although a secured creditor will only be bound by a DOCA in respect of the property subject to their security to the extent that they vote in favor of it.	Restructuring of both secured and unsecured claims can occur in the DOCA phase of the administration process. However, a DOCA can only bind a secured creditor in respect of the property subject to their security to the extent that they vote in favor of it. Because of this limitation on the DOCA procedure, a company seeking to restructure secured claims against it will often instead consider a scheme of arrangement (see separate discussion). Alternatively, it is possible to restructure both secured and unsecured debts with a contemporaneous receivership and voluntary administration.
Is there a classification of creditors and shareholders?	Yes. Classifications of stakeholders, in terms of ranking for distributions from the liquidation estate, are (in very general terms): • secured creditors (whose claims are first satisfied from the assets subject to their security) • priority unsecured creditors (in particular, employee claims and also the costs and remuneration of the liquidator) • ordinary unsecured creditors (e.g., trade creditors and also revenue authorities) Shareholder claims are generally subordinated and payable only in the event of a surplus after all creditor and liquidator claims have been paid. Some recoveries from the realization of secured assets are not available for priority distribution to secured creditors in a liquidation. These are touched on below.	In terms of assessing the merits of a DOCA that may be proposed as part of the process, a classification of creditors and shareholders is taken into account, being (in very general terms): • secured creditors (whose claims are first satisfied from the assets subject to their security) • priority unsecured creditors (in particular, employee claims and also the costs and remuneration of the administrator) • ordinary unsecured creditors (e.g., trade creditors and also including revenue authorities) Shareholder claims are generally subordinated and payable only in the event of a surplus after all creditor and liquidator claims have been paid. Some recoveries from the realization of secured assets are not available for priority distribution to secured creditors in a DOCA. These are touched on below.

AUSTRALIA	Liquidation	Voluntary Administration/Deed of Company Arrangement
Is there a requirement for voting approvals by shareholders?	No.	No. However, shareholders will have a right to appear at any hearing to approve a transfer of the shares in the company to a third party pursuant to a DOCA, and approvals might be required for some transactions to be effected as part of an overall transaction involving a DOCA.
Is there a requirement for voting approvals by shareholders' creditors?	No.	No.
Is there an ability to bind minority dissenting creditors?	Yes. All creditors are bound by the liquidation procedure (except for secured creditors, who may still realize their security).	Yes. A DOCA binds the company, its creditors, officers, shareholders and administrators; however, secured creditors (in respect of the assets subject to their security) can only be bound by a DOCA if they voted in favor of it (and otherwise remain free to enforce their security).
COMMENCING THE PROCESS		
Who can commence?	A voluntary liquidation can be commenced by special resolution of the company's shareholders. Also, as noted above, a creditors' voluntary liquidation is often commenced at a second meeting of creditors in the voluntary administration of the company. A creditor, director, shareholder, liquidator or ASIC can apply to a court to have a company placed into involuntary court-ordered liquidation.	The directors of the company, a liquidator appointed to the company or a secured creditor with security over the whole or substantially the whole of the company's property that has become and remains enforceable can commence a voluntary administration of the company. Once the company is in administration, a DOCA proposal can be made by any party interested in the rehabilitation of the company (commonly a creditor, director or shareholder but also potentially a third party).
Is shareholders' consent required to commence proceedings?	Shareholders consent is required if the liquidation is a voluntary liquidation (except for a voluntary liquidation commencing at the second meeting of creditors in a voluntary administration). Shareholder consent is not required for an involuntary, court-ordered liquidation.	No.
Is there an ability to consolidate group estates?	Yes. Pooling orders can be sought by the liquidator of a group of companies in appropriate circumstances.	Yes. Pooling arrangements may be implemented in a DOCA across a group of companies in appropriate circumstances.

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	Liquidation	Voluntary Administration/Deed of Company Arrangement
Is there any court involvement?	An involuntary court-ordered liquidation is commenced by an order of the court and is then supervised by the court. A voluntary liquidation is commenced without any court involvement. In both involuntary and voluntary liquidations, the court has a range of powers in connection with a company's winding-up, and liquidators can seek directions from the court and are subject to the supervision of the court. Creditors and other persons aggrieved by an act, omission or decision of a liquidator (including the adjudication of their proof of debt) can appeal to the court to review such an act/omission/decision.	The court has no required role in the appointment of a voluntary administrator or the conduct of a voluntary administration. While it is entirely possible that the court will have no involvement in a voluntary administration, it is common for the court to be asked to extend the period in which the second meeting of creditors must be convened on the application of the administrator. This extension is sometimes sought and granted on more than one occasion during a voluntary administration. However, the court has very broad powers to make orders in connection with administrations, and an administrator can seek directions from the court and is subject to the supervision of the court. Creditors and other persons aggrieved by an act, omission or decision of an administrator or a deed administrator (including the adjudication of their proof of debt) can appeal to the court to review such an act/omission/decision.
Who manages the debtor?	The liquidator manages the debtor company from the time of the appointment, with director and shareholder power superseded.	The administrator manages the debtor company during the voluntary administration (with director and shareholder powers superseded). If a DOCA is entered into, control of the debtor company usually returns to the directors and the DOCA administrator is responsible for effectuating the terms of the DOCA (e.g., paying dividends to creditors).
What is the level of disclosure of the process to voting creditors?	There are various statutory reports to creditors, in connection with the liquidation generally. If creditors are asked to approve particular steps in a liquidation, such as the liquidator's remuneration or entry by the company into particular agreements, appropriate disclosure is made to creditors.	The voluntary administrator must give two reports to creditors. One must be given prior to the first meeting of creditors. This report is very basic. It advises creditors of: • the appointment of the voluntary administrator • the date, time and place of the first meeting of creditors • the administrator's declaration of independence and relevant relationships (DIRRI) • the remuneration estimated to be charged for the administration

AUSTRALIA	Liquidation	Voluntary Administration/Deed of Company Arrangement
		The second report to creditors is given five business days before the second meeting of creditors. In convening the second meeting, the administrator must provide creditors with a report ("**Report**"), which: • discusses the company's business, property, affairs and financial circumstances; sets out the details of any proposed DOCA to be put to creditors • provides the administrator's opinion as to whether it is in the interests of the creditors for the company to execute any DOCA that has been proposed, for the administration to end (and the company be returned to the control of its directors) or for the company to be wound up, and the reasons for that opinion The Report will, where a DOCA is proposed, consider the likely returns to creditors in a winding-up compared to the likely returns under the proposed DOCA, both as to quantum and likely timing. This will involve a consideration of what liquidator's recoveries may be available if the company is wound up, as these recoveries are not available in a DOCA.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Australia has special regulations of the financial distress of banks (under the Banking Act 1959 (Cth)) and insurance companies (under the Insurance Act 1973 (Cth)).	
How long does it generally take for a creditor to commence the procedure?	In the case of an involuntary, court-ordered liquidation, the process of having a winding application determined takes around three months (assuming that the company does not actively resist or delay the steps taken to have the company placed into liquidation).	A secured creditor with security over the whole or substantially the whole of the company's property that has become and remains enforceable can appoint an administrator quickly. This is also the case with a liquidator appointing an administrator unless the liquidator is seeking to appoint themselves administrator, in which case a slightly longer process is involved. Unsecured creditors cannot place a company in voluntary administration.

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	Liquidation	Voluntary Administration/Deed of Company Arrangement
EFFECT OF PROCESS		
Does the debtor remain in possession with continuation of incumbent management control?	No. Control of the debtor company passes to the liquidator.	No. Control of the debtor company passes to the administrator.
What is the stay/moratorium regime (if any)?	Following the appointment of a liquidator no action or other civil proceeding can be proceeded with or commenced against the debtor company except by leave of the court and subject to any terms imposed by the court.	During the administration period: • creditors, including some secured creditors, are prohibited from taking any action against the company to recover debts, enforce security interests or have the company wound up • owners or lessors of property that is being used by or is in the possession of the company — including leased premises and goods subject to retention of title or Purchase Money Security Interest (PMSI) terms — are prohibited from seizing or • reclaiming property (notwithstanding that they may have contractual rights to do so); in each case without the consent of the administrator or order of the court. The administrator has personal liability in respect of services rendered, goods bought, property leased or occupied and funds borrowed during the administration. The main exceptions to the moratorium are: • in relation to perishable goods • where enforcement has commenced prior to the appointment of the administrator; or where a secured creditor who has a security interest over the whole or substantially the whole of the company's property enforces its security interest within the "decision period," being 13 business days from the giving of notice by the administrator of their appointment or from the commencement of the administration, or such further time as may be permitted by order of the court or consent of the administrator. The administrator is not able to deal with property subject to a security interest (including property the subject of retention of title or PMSI terms) unless in the ordinary course of business, or with the consent of the secured creditor/owner or the leave of the court.

AUSTRALIA	Liquidation	Voluntary Administration/Deed of Company Arrangement
		Where retention of title or PMSI property is used by the administrator in the ordinary course of business, the Corporations Act requires the administrator to act reasonably in exercising any rights to dispose of that property and to apply the proceeds of sale in a particular manner according to the statutory priority of interests in that property. In addition, guarantees granted by directors of the company cannot be enforced during the administration period. Further, a proceeding "in a court" (excepting a criminal proceeding) against the debtor company or in relation to any of its property cannot be begun or proceeded with except with the consent of the administrator or leave of the court. A DOCA will generally include a moratorium on claims of creditors that are subject to the DOCA being pursued other than by the DOCA process. There is now also, in broad terms, a general moratorium on contract counterparties seeking to terminate contracts with the company on the basis of the company being in voluntary administration.
Is there a provision for debtor-in-possession super priority financing?	No.	No. However, an administrator is personally liable for any borrowings in the administration, and enjoys an indemnity out of the assets of the company in respect of such liability, supported by a lien over those assets. This potentially enables the administrator to borrow funds with a super-priority, although subject to the rights of existing secured creditors.
Can the procedure be used to implement a debt-to-equity swap?	Yes, in certain, very limited circumstances (although this is very rarely used).	Yes, through a DOCA (although there is no special statutory provisions for a debt-to-equity swap).
Are third-party releases available?	No.	No. This limitation has in part been responsible for the growing popularity in recent years of creditors' schemes of arrangement.
Are the proceedings recognized abroad?	Yes, under the Model Law.	Yes, under the Model Law.

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	Liquidation	Voluntary Administration/Deed of Company Arrangement
Has the UNCITRAL Model Law been adopted?	Yes. Australia adopted the Model Law in 2008 (enacted in the Cross-Border Insolvency Act 2008 (Cth)).	Yes. Australia adopted the Model Law in 2008 (enacted in the Cross-Border Insolvency Act 2008 (Cth)).
How long, complex and expensive is the process?	It depends on the size of the company and the nature of any recovery litigation conducted by the liquidator — some simple liquidations take four months, others can run for decades.	The notional standard voluntary administration timetable is 4-6 weeks, but this is often extended in more complex companies (for six months or more, by court order, or by up to nine weeks, by creditor resolution). A DOCA may be implemented very quickly (in a few days) or may also take many months to conclude, depending on the complexity of the DOCA.
Is there a mandatory set-off of mutual debts on insolvency?	Yes.	No, but if the company enters a DOCA then it is usual for the DOCA to provide for liquidation set-off of mutual debts and claims.
Can a debtor continue to carry on business during insolvency proceedings?	A liquidator will only carry on a company's business so far as it is necessary for its sale or winding-up.	The administrator continues to trade the company's business during the voluntary administration, unless the administrator determines that it is not profitable or practicable (given available funding) to do so, in which case the business or parts of it may be shut down by the administrator during the voluntary administration phase.
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Under the Corporations Act, directors have a positive duty to prevent the company from trading while insolvent. If the company incurs a debt while insolvent or becomes insolvent as a result of incurring that debt, and a director at the time the debt is incurred is aware that there are grounds for suspecting the company is insolvent, or a reasonable person in a like position in the company's circumstances would be so aware, that director will have breached their duty by failing to prevent the company from incurring that debt. Insolvent trading can also be a crime where dishonesty is involved. There are only limited defenses available to an insolvent trading claim, including that, when the debt was incurred, the director: • had reasonable grounds to expect, and did expect, that the company was solvent and would remain solvent	Although insolvent trading claims can only be pursued by a liquidator and not an administrator or deed administrator, the Australian insolvent trading prohibition drives director behavior when a company is approaching insolvency. Under the Corporations Act, directors have a positive duty to prevent the company from trading while insolvent. If the company incurs a debt while insolvent or becomes insolvent as a result of incurring that debt, and a director at the time the debt is incurred is aware that there are grounds for suspecting the company is insolvent, or a reasonable person in a like position in the company's circumstances would be so aware, that director will have breached their duty by failing to prevent the company from incurring that debt. Insolvent trading can also be a crime where dishonesty is involved.

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	Liquidation	Voluntary Administration/Deed of Company Arrangement
	• had reasonable grounds to believe that a competent and reliable person was fulfilling their obligation to provide adequate information as to whether the company was solvent and would remain solvent, and expected, on the basis of this information, that the company was solvent and would remain solvent • did not take part in the management of the company • took all reasonable steps to prevent the company incurring the debt (including whether the person took steps to appoint an administrator to the company) • is able to rely on the safe harbor provision, section 588 GA of the Corporations Act • the debt was incurred between 25 March 2020 and 24 September 2020 in the ordinary course of the company's business If a director has been found to have breached the duty to prevent insolvent trading, the liquidator may recover from the director, as a debt due to the company, the amount of any loss or damage suffered by an unsecured creditor whose debt was incurred while the company was insolvent. In limited circumstances, the affected creditor can sue for recovery of its loss and damage directly.	There are only limited defenses available to an insolvent trading claim, including that, when the debt was incurred, the director: • had reasonable grounds to expect, and did expect, that the company was solvent and would remain solvent • had reasonable grounds to believe that a competent and reliable person was fulfilling their obligation to provide adequate information as to whether the company was solvent and would remain solvent, and expected, on the basis of this information, that the company was solvent and would remain solvent • did not take part in the management of the company • took all reasonable steps to prevent the company incurring the debt (including whether the person took steps to appoint an administrator to the company) • is able to rely on the safe harbor provision, section 588 GA of the Corporations Act • the debt was incurred between 25 March 2020 and 24 September 2020 in the ordinary course of the company's business The risk of insolvent trading liability often drives directors to place a company into voluntary administration promptly, and the risk of such liability in a liquidation scenario often encourages directors to propose a DOCA for the company (in order to avoid a liquidator being appointed who may then pursue insolvent trading claims).
What is the order of priority of claims?	Specified debts and claims will take priority over the claims of unsecured creditors in liquidation, being in general terms: • expenses incurred by a liquidator and any prior administrator in preserving and realizing the property of the company • the costs and expenses of obtaining any order for liquidation; and priority employee entitlements All other unsecured debts rank equally according to the pari passu principle and if the property of the company is insufficient to meet them in full, they must be paid pro rata.	Adjudication and payment of creditors does not form part of the voluntary administration process. If a company enters into a DOCA, generally the liquidation priorities are respected, although it is possible to discriminate between creditors on a rational basis, such as in favor of "continuing" creditors. However, a DOCA must give employee entitlements the statutory priority to which they would be entitled in winding-up out of assets of the company coming under the control of the deed administrator unless employee creditors vote to modify this priority at a separate meeting of the employees convened under section 444DA of the Corporations Act. Priority employee entitlements include wages and superannuation, leave and redundancy entitlements.

AUSTRALIA	Liquidation	Voluntary Administration/Deed of Company Arrangement
	Secured creditors are entitled to enforce their security interest during the liquidation, assuming it is not void as against the liquidator. However, the secured creditor's claim to assets subject to a circulating security interest — usually cash, receivables, inventory and similar assets — is statutorily subordinated to specified employee claims that qualify for priority in a winding-up, being wages and superannuation, leave and redundancy entitlements.	
Are there any pension liabilities?	No.	No.
Is it possible to challenge prior transactions?	The primary tools for recovery by a liquidator are voidable transactions (which include unfair preferences and uncommercial transactions) and insolvent trading claims (touched on above). There are other courses of action available to liquidators, including in relation to unfair loans and unreasonable director-related transactions that are beyond the scope of this document. **Unfair preferences** Unfair preferences are the most common type of liquidator recovery. An unfair preference is a payment made to, or benefits received by, a creditor of the company in respect of an unsecured debt owed by the company within a period of six months prior to the deemed commencement of the winding-up[1] if: • that unsecured creditor has been preferred over other unsecured creditors (i.e., the creditor has received more than if they had proved in the winding-up in respect of the debt and participated pari passu for dividend) • the payment or benefit was received at a time when the company was insolvent or the company became insolvent as a result of making that payment or giving that benefit. • There are potential defenses to an unfair preference claim, most commonly if the creditor can establish that it: • became a party to the transaction in good faith	No. Voluntary administration and a DOCA, being rehabilitation procedures, are not concerned with challenges to prior transactions. However, the report provided to creditors in relation to options for the company's future provided prior to the second meeting of creditors in an administration will include a preliminary assessment of the availability of recovery action in relation to prior transactions — this assists with assessing the merits of a DOCA proposal in respect of the debtor company against proceeding into liquidation.

- had no reasonable grounds for suspecting that the company was insolvent at the time or would become insolvent as a result of the transaction and a reasonable person in their circumstances would have had no such grounds for so suspecting
- has provided valuable consideration or changed its position in reliance on the transaction.

Uncommercial transaction

An uncommercial transaction of the company entered into within two years prior to the deemed commencement of the liquidation is voidable on the application of the liquidator if it was entered into or given effect to at a time when the company was insolvent, or if the company became insolvent as a result of it entering into the transaction.

Whether a transaction is "uncommercial" is assessed by reference to, among other factors, the benefits and detriment to the company and to other parties of entering into the transaction. The test for what constitutes an uncommercial transaction has been expressed as "a bargain of such magnitude that it could not be explained by normal commercial practice." Although the quintessential uncommercial transaction is a disposition of company property at an undervalue (such as in phoenix company conduct), the concept is not so limited.

There are potential defenses to an uncommercial transaction claim, most commonly if the defendant can establish that it:

- became a party to the transaction in good faith
- had no reasonable grounds for suspecting that the company was insolvent at the time or would become insolvent as a result of the transaction and a reasonable person in their circumstances would have had no such grounds for so suspecting
- provided valuable consideration or changed their position in reliance on the transaction.

This is known as the relation-back day. It is important to note that depending on the circumstances of the winding-up and its commencement, the relation-back day calculation can change. Section 91 of the Corporations Act comprehensively outlines the process for calculating the relation-back day. An explanation of each of these circumstances is beyond the scope of this document.

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	Liquidation	Voluntary Administration/Deed of Company Arrangement
Is state support for distressed businesses available?	No.	No, although there are instances of such support being provided on an ad hoc basis (see the COVID 19 content below)
COVID-19		
Is state support for distressed businesses available?	Yes, extensive federal government stimulus measures have been announced, substantially effected through the taxation system, and are regularly evolving, including taxation measures and an AUD 130 billion "JobKeeper" package funding employers to continue to retain employees during the COVID-19 pandemic. The states and territories are looking to legislate specific relief for COVID-19 affected tenants in the short term, consistent with National Cabinet Mandatory Code of Conduct SME Commercial Leasing Principles During COVID-19 ("Code"). The legislation the Code anticipates will apply to commercial tenants with annual turnover of up to AUD 50 million (SMEs), and is intended to result in reduced rents proportionate to the tenant's COVID-19 reduced revenues, up to 100%. This is intended to be achieved at least 50% by rent waivers, with the balance permitted to be by deferral, with any government concessions (such as reduced land tax) to be passed through to the tenant. The Code anticipates a range of other protections, such as freezes on rent increases, extensions to leases reflecting the period of the waiver/deferral of rent, and preventing landlords acting on reduced opening hours by tenants.	
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	A new "COVID-19" defense to the insolvent trading prohibition has been introduced, where debts are incurred in the period from 25 March 2020 to 24 September 2020 in the ordinary course of the company's business. In addition, the Corporations Act has been amended to require a statutory demand issued to a debtor during the COVID-19 pandemic to be for a minimum of AUD 20,000 (previously AUD 2,000) and giving the debtor company six months to comply with the statutory demand or apply to set it aside (previously 21 clear days). The states and territories are looking to legislate specific relief for COVID-19 affected tenants in the short term, consistent with the Code. Although not a government body, the Australian Banking Association (ABA) has committed its members (including the "Big 4" Australian banks, being Westpac, National Australia Bank, ANZ and Commonwealth Bank) to 6-month deferrals of loan repayments on residential and some smaller business loans.	
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	The insolvency profession is discussing whether counterparties to insolvent companies need specific protection, given that they will be highly exposed to unfair preference claims in respect of payments received during the COVID-19 pandemic from companies that go into liquidation within six months.	

UPDATED MAY 5, 2020

AUSTRIA

AUSTRIA

Insolvency proceedings

INITIAL CONSIDERATIONS

Can you take security over all types of assets, including working capital?

Austrian law allows security to be taken over any kind of property. This includes physical objects as well as rights, claims or receivables. However, certain requirements need to be met for a security interest to be created effectively. One of those requirements says that the assets to be taken as security need to be specified in order to be identifiable. Referring to "working capital" as such would not be specific enough.

What is the nature of the process?

In 2010, the Austrian legislator introduced what can be described as uniform insolvency proceedings. Insolvency proceedings are based on the Austrian Insolvency Code (*Insolvenzordnung* — "**IO**").

The debtor is typically managed by a court-appointed administrator. However, the debtor can, under certain circumstances, retain control over its management, but would be supervised by an administrator.

Insolvency proceedings aim to limit the losses of the creditors in the event of an insolvency. Relatively early on, the administrator will be required to assess whether the operations of the debtor can be continued or should be shut down. Any obligations coming into existence after the opening of the proceedings have priority over the claims of existing creditors.

The debtor can propose a restructuring plan (*Sanierungsplan*) to the creditors, according to which the debtor would pay a minimum of 20% of the outstanding debt within two years, while any debt exceeding the quota offered in the plan would be absolved. If a restructuring plan is proposed upon the initiation of the proceedings, they are referred to as restructuring proceedings (*Sanierungsverfahren*).

The restructuring plan needs to be accepted by the creditors and the court. The creditors are represented in two institutions during the proceedings:

i. Creditors' committee (gläubigerausschuss): This consists of three to seven court-appointed members. Approval is required for the disposal of certain assets and a regular decision requires a simple majority of votes.

ii. Creditors' meeting: Any creditor, whose claims have been accepted, may participate in the meeting. The decision requires the approval of creditors representing a simple majority of claims accepted by the administrator and special majority requirements apply to the approval of a restructuring plan (a simple majority of creditors present in a meeting, representing more than 50% of accepted claims).

If no restructuring plan is proposed or accepted, the administrator will aim to liquidate the existing assets and distribute the proceeds to the creditors. Depending on the net proceeds (after priority claims, including the costs of the proceedings, have been paid), all creditors will receive a certain percentage of their accepted claims.

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Insolvency proceedings

What is the solvency requirement?	Insolvency proceedings can be initiated if at least one of the following two requirements is met: i. Illiquidity: A debtor is unable to meet due payment obligations. ii. Over-indebtedness: a. A debtor's debt exceeds the value of its assets. b. There is no positive outlook for the debtor's continued existence. The debtor (and only the debtor) can further request the initiation of insolvency proceedings as restructuring proceedings if a case of imminent illiquidity is given (meaning that the debtor is still able to meet payment obligations, but has reason to believe that this might change).
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes. Austria is a Member State of the European Union and accordingly the EU Insolvency Regulation applies. This means that Austrian courts only have jurisdiction in insolvency proceedings of debtors whose COMI is located in Austria.
Is restructuring of both secured and unsecured claims possible?	No, secured claims are not affected by a restructuring plan. Unsecured claims may be partially written down or postponed as a result of a restructuring plan. To the extent that secured claims are not covered by the relevant security, they are treated as unsecured claims and may be affected by the restructuring plan.
Is there a classification of creditors and shareholders?	Yes. First, there is a differentiation between regular creditors of the debtor (*insolvenzgläubiger*) and creditors of the estate (*massegläubiger*). Creditors of the estate have preferential claims, including the costs of the proceedings, employee wages for the period subsequent to the opening of the proceedings, employees' claims for separation benefits and claims based on actions taken by the administrator after the opening of the proceedings. Distributions to other creditors are only possible once all such claims are satisfied. The regular creditors can again be classified as follows: i. Secured creditors, including: a. Creditors with a right to segregation of assets from the estate. b. Creditors with a right to preferred satisfaction of claims. ii. Unsecured creditors Claims of shareholder creditors (for example, creditors under shareholder loans) are classified as lower ranking than other creditors' claims.
Is there a requirement for voting approvals by shareholders?	No, the commencement of insolvency proceedings does not require shareholder approval. However, a restructuring plan needs to be proposed by the debtor, which is controlled by the shareholders. If the debtor is a partnership, every partner's approval of the restructuring plan is required.

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Insolvency proceedings

Is there a requirement for voting approvals by shareholders' creditors?	No, since shareholders' creditors are classified as shareholders.
Is there an ability to bind minority dissenting creditors?	Minority creditors are bound by decisions taken by the relevant majority of creditors.

COMMENCING THE PROCESS

Who can commence?	The initiation of insolvency proceedings can be requested by: (i) the debtor (represented by its management); or (ii) any creditor. In the event of imminent illiquidity, only the debtor can initiate restructuring proceedings. The competent insolvency court reviews the case and opens insolvency proceedings, if it has reason to believe that the insolvency requirements are met.
Is shareholders' consent required to commence proceedings?	No.
Is there an ability to consolidate group estates?	No, insolvency proceedings for each legal entity are formally independent. However, in the event that related entities are subject to insolvency proceedings, the administrators may co-operate to a certain degree. Each administrator is required to act in the best interest of the creditors of their estate.
Is there any court involvement?	Yes, the court decides whether the debtor is insolvent and whether proceedings can be opened. After the initiation of the proceedings, the court takes a supervising function. The court's approval is required for certain actions, including the disposal of certain assets and a potential restructuring plan.
Who manages the debtor?	Typically, the debtor is managed by a court-appointed administrator. The administrator is usually an attorney. The debtor can, however, request to retain management control. If such request is granted, which often is the case if there is a chance for the debtor to continue to exist and if an appropriate restructuring plan is provided, the debtor's management stays in control. An administrator is appointed in a supervisory function. The administrator's approval is required for extraordinary transactions. Certain decisions may only be taken by the administrator. Such decisions include decisions on the avoidance of transactions and the review of creditors' claims.

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Insolvency proceedings

What is the level of disclosure of the process to voting creditors?	The creditors' committee is required to supervise the administrator's or the debtor's activities and has a high level of access. The creditors' committee is further required to audit the estate's books under certain circumstances. The creditors' meeting only has limited day-to-day access to the estate. Prior to deciding on the restructuring plan, the creditors do have access to the plan, which typically includes information on the debtor's financial situation.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Special insolvency rules apply to banks and securities firms, which are subject to the rules set out in the Act on Bank Recovery and Resolution (BaSAG) implementing the EU Bank Recovery and Resolution Directive (BRRD).
How long does it generally take for a creditor to commence the procedure?	How long it takes creditors to commence insolvency proceedings is heavily dependent on the specifics of each case. However, the debtor's management is typically quick to initiate proceedings, since insolvent trading is a criminal offence and can lead to the managers being personally liable. Once an insolvency is reported to the competent court, the court is usually quick to issue its decision and open the proceedings. The court does not have to perform a full review on whether the debtor is insolvent, but may open proceedings if it has reasons to believe that the debtor is insolvent.

EFFECT OF PROCESS

Does the debtor remain in possession with the continuation of incumbent management control?	Management control over the debtor is typically transferred to a court-appointed administrator. However, under certain circumstances, the debtor can request that its management remain in control. Among others, the following requirements need to be met: i. A restructuring plan offering a quota exceeding 30% needs to be offered. ii. An exact list of assets needs to be provided. iii. A cash flow prognosis for the next 90 days needs to be provided. The debtor needs to lay out how it intends to fulfil the restructuring plan and what measures it intends to take.
What is the stay/moratorium regime (if any)?	All ongoing court proceedings and foreclosure or collection activities against the debtor are to be suspended. The court can order a stay on the enforcement of certain security rights, if such an enforcement would be detrimental for the financial and economic situation of the estate.
Is there a provision for debtor-in-possession super priority financing?	No.

AUSTRIA

Insolvency proceedings	
Can procedure be used to implement debt-to-equity swap?	No, a debt-to-equity swap is not allowed for under Austrian insolvency law.
Are third-party releases available?	The release of third-party debtors (including guarantors) requires the express consent of the relevant creditor (Section 151 IO).
Are the proceedings recognized abroad?	The proceedings are recognized by EU Member States on the basis of the EU Insolvency Regulation. The recognition by other countries may be based on domestic conflict-of-law provisions or principles, or bi- or multi-lateral agreements.
Has the UNCITRAL Model Law been adopted?	No.
How long, complex and expensive is the process?	If no restructuring plan is proposed or accepted, the liquidation of the debtor's assets may take several months to years, depending on the structure and complexity of the case. The process leading up to a restructuring plan usually takes several months. The costs depend on the size and complexity of the insolvency. Fees of the court, the creditor committee and the administrator have priority over creditors' claims.
Is there a mandatory set-off of mutual debts on insolvency?	No. However, creditors' rights to set-off existing prior to the insolvency proceedings are not affected by the debtor's insolvency. The insolvency additionally allows debtors to set-off against claims that are not yet due and/or conditional.
Can a debtor continue to carry on business during insolvency proceedings?	Shortly after the opening of the insolvency proceedings, the administrator will assess the debtor's situation and then decide whether the business is suitable for carrying on operations. If the administrator believes that carrying on operations is in the creditors' interest, they will do so. Otherwise, they will request the court's permission to shut down operations.
OTHER FACTORS	
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Yes, Austrian law imposes both civil and criminal sanctions on wrongful or insolvent trading activities by the debtor's management. Section 158 of the Austrian Criminal Code sets out criminal consequences for favoring certain creditors at the expense of others in an insolvency situation. This offence is punishable by up to two years in prison. Section 159 of the criminal code punishes the grossly negligent impairment of creditors' interest with prison sentences of up to one year.

AUSTRIA

Insolvency proceedings

What is the order of priority of claims?	1. Rights to segregation (aussonderungsrechte): If an asset does not belong to the estate, creditors can assert a right to segregation concerning that very asset. This concerns objects that are not the debtor's property (for example, leased assets or assets subject to a retention of title) but also assets confided to the debtor as a trustee. 2. Claims against the estate (masseforderungen): Certain claims listed in Section 46 IO have priority over other claims. Such claims include: a. the costs of the insolvency proceedings (including compensation for the administrator and creditor organizations) b. costs and expenses (including taxes and employees' wages) arising from actions taken or periods after the opening of the insolvency proceedings c. costs arising from the termination of employment (under certain circumstances) d. claims arising from existing contracts that the administrator stepped into after the opening of the proceedings e. all claims based on actions taken by the administrator f. claims based on unjustified enrichment of the estate
Are there any pension liabilities?	Company pension schemes constitute a supplement to statutory pensions. They are granted by a company on a voluntary basis. If the company pension is paid directly by the debtor (and not by a third party, such as an insurance company), no more pension payments can be made by the company. The pension will be partially covered by an entity established to ensure employee compensation in the event of insolvency. To the extent that pension claims are not covered by said entity, they can be registered in the debtor's insolvency as claims against the debtor and are subject to the same procedure as any other claims.
Is it possible to challenge prior transactions?	Yes, prior transactions can be challenged as a result of the basic principle that all creditors are treated equally in the debtor's insolvency proceedings. This means that prior transactions can be challenged for the following reasons: i. intention to discriminate against other creditors ii. preferential treatment of one or more creditors iii. transactions with no consideration iv. a counterparty's knowledge of the debtor's illiquidity or over-indebtedness v. dissipation of assets The administrator may challenge transactions for the reasons above. Proceeds generated by such challenges increase the estate and will be used to satisfy the creditors' claims.

AUSTRIA

Insolvency proceedings

COVID-19

Is state support for distressed businesses available?

The federal government has set up a COVID-19 state support package of initially EUR 4 billion, which was made available to distressed businesses mainly in form of direct grants (micro-enterprises) and short-time working aid. The fund's resources were later extended to up to EUR 28 billion.

Additionally, a financial aid package of up to EUR 34 billion has been introduced consisting of the following measures:

- EUR 15 billion in emergency aid for particularly affected sectors ("Corona Relief Fund")
- EUR 10 billion for tax deferrals
- EUR 9 billion for guarantees and warranties for current loans of affected companies

This package is made available through a mix of instruments adapted to the respective needs of the sectors (e.g., loans and warranties).

Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?

Extension of application period

In general, upon the occurrence of insolvency, managers of an affected company are obliged under Section 69 IO to file for the opening of insolvency proceedings without undue delay, but no later than 60 days after the occurrence of insolvency. In the event of insolvency due to a natural disaster (such as the coronavirus pandemic), this period is extended to 120 days.

Postponement of enforcements

Pursuant to Section 200b of the Austrian Enforcement Act (*Exekutionsordnung*), a debtor can file for the postponement of an enforcement if it is affected by a natural disaster (such as the coronavirus pandemic).

Filing exemptions

In light of COVID-19, the Austrian legislator has amended the filing requirements under the IO. A debtor is not obliged and a creditor is prohibited from filing for the opening of insolvency proceedings in case of over-indebtedness if such over-indebtedness is occurring in the period from 1 March 2020 to 30 June 2020. Please note that the filing is still necessary if, in addition to being over-indebted, a debtor is also unable to pay its due obligations.

Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.

As of 30 April 2020, the federal government has not announced any further plans to reform the insolvency regime.

UPDATED MAY 5, 2020

BELGIUM

BELGIUM	Judicial reorganization through collective agreement	Bankruptcy
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Security can generally be taken over all assets, including working capital. Security taken after the opening of a procedure of judicial reorganization will have no effect during such procedure.	Security can be taken up to the day preceding the bankruptcy judgment, but security taken in the pre-bankruptcy hardening period (if any) may be subject to challenge. See below for more information on the pre-bankruptcy hardening period.
What is the nature of the process?	A pre-bankruptcy moratorium with a view to safeguarding the continuity of part or all of the assets or activities of the enterprise. In principle, the debtor remains in possession.	A court process with a view to the liquidation of the debtor's assets and the distribution of any proceeds to its creditors. An independent court appointee assumes control over the debtor.
What is the solvency requirement?	The procedure will be opened if the continuity of the enterprise is at risk, either immediately or in the future. The continuity is deemed to be at risk when losses have reduced net assets to less than half of the share capital. A state of cessation of payments does not in itself preclude the opening of the procedure.	The conditions for bankruptcy are a durable cessation of payments and the inability to obtain further credit.
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes.	Yes.

BELGIUM

	Judicial reorganization through collective agreement	Bankruptcy
Is restructuring of both secured and unsecured claims possible?	Yes, but secured claims cannot be affected without the individual consent of the creditor save for a suspension of rights that cannot exceed a period of 24-36 months as from the date of ratification of the reorganization plan and subject to payment of interest. The above protection is, however, limited to the secured amount of the security, the going concern realization value of the secured assets or the book value of secured receivables.	There is no restructuring. The aim of the procedure is to liquidate the debtor's assets and distribute the proceeds to the creditors in accordance with their respective priority rights.
Is there a classification of creditors and shareholders?	All creditors affected by the reorganization plan vote as one class.	N/A
Is there a requirement for voting approvals by shareholders?	No.	N/A
Is there a requirement for voting approvals by shareholders' creditors?	If a shareholder is also a creditor affected by the reorganization plan, they will vote together with the other creditors.	N/A
Is there an ability to bind minority dissenting creditors?	Yes. The reorganization plan will be approved in case of positive vote by a double 50% + 1 majority by (i) headcount of creditors affected by the reorganization plan and (ii) principal amounts of their claims. If such approval is obtained and subject to court ratification, unsecured minority dissenting creditors are nevertheless bound by the reorganization plan. In relation to secured creditors, please see above under "Is restructuring of both secured and unsecured claims possible?"	N/A
COMMENCING THE PROCESS		
Who can commence?	The debtor.	The debtor, one or more creditors, the public prosecutor's office, a provisional administrator appointed by the court and the bankruptcy trustee of the main insolvency proceedings in case of territorial insolvency proceedings.
Is shareholders' consent required to commence proceedings?	No.	No.

BELGIUM

	Judicial reorganization through collective agreement	Bankruptcy
Is there an ability to consolidate group estates?	No, but there is a possibility to appoint a common insolvency practitioner for group members with a COMI in Belgium. Group cooperation and coordination with group members with a COMI in the EU as per Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings ("**EUIR**").	
Is there any court involvement?	Yes. The court opens and supervises the process. Any reorganization plan approved by the double majority of creditors is to be ratified by the court.	Yes. The court opens and supervises the process.
Who manages the debtor?	In principle, the debtor remains in possession.	A court-appointed independent bankruptcy trustee.
What is the level of disclosure of the process to voting creditors?	Creditors will receive access to the draft reorganization plan and will be invited to a court hearing for the creditors' vote on the plan. The court hearing will take place no earlier than 15 days following notice to the creditors.	N/A
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Public law entities are excluded. Consumers are subject to a specific insolvency procedure, the collective debt administration. Credit institutions, insurance undertakings, investment firms, management companies of collective investment undertakings, clearing and settlement institutions and similar institutions, reinsurance undertakings, institutions for occupational retirement provision, financial holding companies and mixed financial holding companies are excluded from the benefit of judicial reorganization proceedings. These entities are subject to sector-specific legislation.	Public law entities are excluded. Consumers are subject to a specific insolvency procedure, the collective debt administration.
How long does it generally take for a creditor to commence the procedure?	Any request to open a judicial reorganization procedure must be accompanied by a number of documents, including a statement of assets and liabilities and an income statement no older than three months and a forward-looking cash flow statement for the duration of the requested stay, with such documents to be prepared with the assistance of an auditor or external accountant. It generally takes a few weeks to prepare these and the other required documents. The court will organize a hearing within 15 days of the filing of the request to open the procedure. The court will subsequently decide within eight days following the hearing. In the period between the filing of the request and the decision by the court, the debtor will, however, already benefit from protection against bankruptcy filings and enforcement measures.	A debtor that meets the conditions for bankruptcy must file for bankruptcy (or request a judicial reorganization) within one month of the conditions being satisfied.

BELGIUM

	Judicial reorganization through collective agreement	Bankruptcy
EFFECT OF PROCESS		
Does the debtor remain in possession with continuation of incumbent management control?	In principle, yes.	No. A court-appointed bankruptcy trustee assumes control.
What is the stay/moratorium regime (if any)?	The debtor benefits from a moratorium in the period between the opening of the procedure by the court and the ratification of the reorganization plan. Subject to limited exceptions, creditors may not take any enforcement action.	N/A
Is there a provision for debtor-in-possession super priority financing?	Yes. New creditors are not subject to the moratorium. If there is a close connection between the termination of the judicial reorganization and a subsequent bankruptcy, new creditors will enjoy a super priority in the subsequent bankruptcy.	Yes.
Can the procedure be used to implement a debt-to-equity swap?	Yes.	N/A
Are third-party releases available?	Third parties, such as co-debtors, guarantors or security providers, in principle do not benefit from the procedure.	
Are the proceedings recognized abroad?	Yes. In the EU in accordance with the provisions of the EUIR.	
Has the UNCITRAL Model Law been adopted?	No.	
How long, complex and expensive is the process?	The time period between the opening of the procedure and the ratification of the reorganization plan will vary based on the circumstances of the situation. When opening the procedure, the court may fix a moratorium of up to six months. This period can subsequently be extended up to a total of 12 (or, in extraordinary circumstances, 18) months. The procedure is relatively straightforward and, given that the debtor stays in possession, inexpensive.	The duration of the procedure will vary based on the circumstances of the situation. A duration of several years is not unusual. The fee of the bankruptcy trustee(s) is fixed by Royal Decree and calculated based on a decreasing percentage of the liquidation proceeds. For liquidation proceeds above EUR 3.35 million (subject to indexation), the bankruptcy trustees' fee may not exceed 1.4%.

BELGIUM

	Judicial reorganization through collective agreement	Bankruptcy
Is there a mandatory set-off of mutual debts on insolvency?	No. On the contrary, the opening of an insolvency procedure will generally restrict set-off to mutual debts that are closely connected, which have mutual due dates prior to the opening of the insolvency procedure and/or for which a contractual set-off or netting provision was previously agreed.	
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	The bankruptcy court may authorize the bankruptcy trustee to continue the business.
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	The judicial reorganization is a moratorium with a view to safeguarding the continuity of part or all of the assets or activities of the enterprise. As such, directors may be able to reduce the risk of liability for wrongful or insolvent trading by requesting a judicial reorganization.	Yes. Directors, including former directors and de facto directors, may be held liable for part or all of the net liabilities if (i) the director knew or must have known that there was no reasonable prospect of safeguarding the enterprise or its activities and avoiding bankruptcy, and (ii) the director did not act like a reasonably prudent director would have acted in similar circumstances. In addition, as stated above, the directors must declare bankruptcy (or request a judicial reorganization) within one month of the date on which the conditions for bankruptcy are satisfied.
What is the order of priority of claims?	The reorganization plan will determine to what extent creditors will be disinterested. In relation to secured creditors, please see above under "Is restructuring of both secured and unsecured claims possible?" In relation to unsecured creditors, the reorganization plan must in principle offer a repayment of at least 20% of the principal amount of each claim. If the reorganization plan provides for a different treatment of different creditors, public creditors with a general lien (e.g., tax authorities) may in principle not be treated less favorably than the unsecured creditors that are treated most favorably. Employees must be paid in full.	The order of priority in case of bankruptcy is extremely complicated given the many different types of liens (e.g., vendor's lien, general lien of public creditors and employees) recognized by law. Secured claims will be senior to unsecured claims to the extent of the value of the secured assets, but may be junior to specific liens affecting the secured assets (e.g., vendor's lien). A case-by-case analysis is inevitable.
Are there any pension liabilities?	Company pension schemes are supervised by the Financial Services and Market Authority (FSMA). Due to the fact that company pension schemes must be externalized to a pension provider (be it a group insurer or a pension fund), a potential judicial reorganization of an employer would not affect the pension provisions.	Company pension schemes are supervised by the Financial Services and Market Authority (FSMA). Due to the fact that company pension schemes must be externalized to a pension provider (be it a group insurer or a pension fund), a potential bankruptcy of an employer would not affect the pension provisions. In case the pension provider is subject to bankruptcy proceedings, the employer will remain responsible for the fulfillment of the pension obligations towards its employees.

BELGIUM

	Judicial reorganization through collective agreement	Bankruptcy
Is it possible to challenge prior transactions?	There is no specific mechanism to challenge transactions that occurred prior to judicial reorganization. The general principles of law in relation to fraudulent acts will apply.	The default position is that there is no pre-bankruptcy hardening period. If there are serious and objective circumstances that unambiguously indicate that payments have ceased prior to the bankruptcy judgment, the bankruptcy court may however impose a pre-bankruptcy hardening period. If imposed, the pre-bankruptcy hardening may (subject to limited exceptions) not exceed six months. Payments effected, and legal acts entered into, during the pre-bankruptcy hardening period may be subject to challenge. Payments effected, and legal acts entered into, prior to the pre-bankruptcy hardening (or, if no pre-bankruptcy hardening period is imposed, prior to the bankruptcy judgment) may in principle only be challenged in case of intent to prejudice the creditors.

COVID-19

Is state support for distressed businesses available?	A large and ever-expanding set of government support initiatives are being taken by the federal and regional governments in order to help companies overcome the economic impact of COVID-19. There is, for example, a deferral of payment of VAT, withholding tax and social security as well as a possibility of placing employees under a system of temporary unemployment. In addition, the Belgian federal government and the financial sector have reached an agreement pursuant to which banks undertake to grant viable non-financial enterprises with a deferral of principal repayments on loans and credits for six months without charging any additional costs. Another key support measure is an up to EUR 50 billion state guarantee scheme for short-term liquidity loans. For more information, please consult https://www.bakermckenzie.com/en/insight/publications/2020/03/covid19-government-intervention-schemes.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	The following measures apply from 24 April 2020 until 17 June 2020: (i) a moratorium on bankruptcies, (ii) a prohibition to take or continue enforcement measures and (iii) a prohibition to terminate contracts entered into prior to 24 June 2020 for reasons of non-payment. For more information, please consult https://insightplus.bakermckenzie.com/bm/international-commercial-trade/royal-decree-nr-15-moratorium-on-bankruptcies-and-enforcement-measures-for-non-payment.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	No. However, the moratorium on bankruptcies and enforcement measures as referred to above might be extended beyond 17 June 2020.

UPDATED MAY 5, 2020

BRAZIL

BRAZIL	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
INITIAL CONSIDERATIONS			
Can you take security over all types of assets, including working capital?	Yes.	Yes, as long as this is set forth in the plan approved by the creditors' meeting.	No.
What is the nature of the process?	An extrajudicial reorganization proceeding is an out-of-court process (similar to a pre-pack) to restructure a viable company's debt to avoid a formal insolvency process and/or judicial reorganization proceeding. It is a contractual agreement between the debtor and creditors (or some of them) to reschedule/modify the obligations. Once the agreement is signed, the debtor is entitled — as long as some requirements are fulfilled — to request its ratification in court in order to extend it to all the same class creditors subject to such process.	A judicial reorganization proceeding is a court process that aims to restructure a company's debts.	Bankruptcy is a court process consisting of (i) a declaration of a state of insolvency and (ii) as a consequence, dissolution of the debtor by selling its assets and splitting the proceeds between the credits in accordance with the payment list sets forth in the law.
What is the solvency requirement?	The debtor must be in financial distress, which means a potential insolvency.	The debtor must be in financial distress, which means a potential insolvency.	The debtor must currently or imminently be cash flow insolvent.

BRAZIL

	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes. Broadly, only Brazilian companies (i.e., companies that are registered in Brazil) may be entitled to request an extrajudicial reorganization proceeding.	Yes. Broadly, only Brazilian companies (i.e., companies that are registered in Brazil) may be entitled to request a judicial reorganization proceeding. Note, however, that there are decisions granting the judicial reorganization of foreign companies jointly with Brazilian companies (in those cases, the foreign companies were not operational and were related to the granting of foreign investments).	Yes. Note, however, that in the event of a piercing of a corporate veil, Brazilian courts understand that it is possible to declare a foreign company bankrupt in Brazil.
Is restructuring of both secured and unsecured claims possible?	Yes.	Yes.	Secured and unsecured creditors will be paid according to their ranking (the Brazilian Bankruptcy Law provides the payment order in Article 83) and value.
Is there a classification of creditors and shareholders?	The Brazilian Bankruptcy Law does not provide for a classification of creditors in extrajudicial reorganization. The debtor and creditors are free to establish a contractual classification but that would only apply to the creditor parties that are signatories. However, only secured and unsecured credits may be renegotiated through extrajudicial reorganization proceedings.	Yes. Creditors subjected to judicial reorganizations are divided into four classes (labor, secured, unsecured and small companies credits). In general, shareholders' creditors will be classified as secured or unsecured. Tax creditors cannot settle through judicial reorganization proceedings.	Yes. Since the bankruptcy process aims to liquidate the company, once the assets are sold, the proceeds must be divided. The Bankruptcy Law states the following payment order: (i) super-priority creditors (for example, bankruptcy estate costs, and loans granted during the judicial reorganization proceeding); (ii) labor credits up to 150 minimum wages; (iii) secured creditors; (iv) tax creditors; (v) creditors with some privilege; (vi) unsecured creditors; (vii) contractual penalties and fines, including tax penalties; and (viii) subordinated credit (e.g., shareholders' credits).
Is there a requirement for voting approvals by shareholders?	No. However, corporate documents may provide the necessity of shareholders' approval.	No. However, corporate documents may provide the necessity of shareholders' approval.	No. However, in the case of a self-bankruptcy process, corporate documents may provide the necessity of shareholders' approval.

BRAZIL

	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
Is there a requirement for voting approvals by shareholders' creditors?	No, since there is no voting process. Note that shareholders' credit is not considered for the quorum (three-fifths of the total amount of the credits involved in the extrajudicial reorganization proceeding) necessary for the debtor to request the court ratification of the agreement and, as a consequence, the extension of its terms and conditions to the remaining creditors of the class.	Yes. Shareholders' creditors may not vote.	N/A.
Is there an ability to bind minority dissenting creditors?	Yes. The law provides that the debtor may file for court ratification of the agreement reached in order to extend its terms and conditions to all creditors of the classes encompassed in the agreement as long as it is accepted by creditors representing over three-fifths of all claims of the corresponding same class of creditor.	Yes. The judicial reorganization plan (i.e., the document providing all of the terms and conditions of the restructured debts) must be submitted to the creditors' meeting for approval. In the creditors' meeting, creditors are divided into four different classes: (i) labor credits; (ii) secured creditors; (iii) unsecured creditors and (iv) small companies. The plan has to be approved by the present creditors, representing more than half of the total amount of claims presented at the general meeting of creditors, and also by the simple majority of all creditors present. Creditors belonging to the labor class shall approve the judicial reorganization plan by simple majority of all creditors present, independently of the amount of their credits. If the creditors' meeting rejects the plan, the court shall declare the bankruptcy of the debtor. If the reorganization plan is not approved by the creditors in the meeting, the court may grant the judicial reorganization to the debtor if the following conditions are met ("cram down power"): (i) favorable vote of creditors representing more than half of the amount of all claims represented at the creditors' meeting, regardless of their classes; (ii) approval of two classes of creditors or, if there are only two classes of voting creditors, the approval of at least one of them; and (iii) favorable votes of more than one-third of the creditors in the class that rejected the plan.	N/A.

BRAZIL

	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
COMMENCING THE PROCESS			
Who can commence?	The debtor. Moreover, there are some requirements that the debtor must fulfill to request extrajudicial reorganization as follows: (i) the applicant may not be a bankrupted individual/entity (unless the responsibilities arising from the bankruptcy sentence have already expired); (ii) the applicant shall not have entered into judicial reorganization during the previous five years; and (iii) the applicant, its controlling shareholders and its managers shall not have been convicted of any bankruptcy crime in the past.	The debtor. Moreover, there are some requirements that the debtor must fulfill to request judicial reorganization: (i) the debtor must have been performing its activities for more than two years and (ii) the debtor must comply with the following requirements: (1) the applicant may not be a bankrupted individual/ entity (unless the responsibilities arising from the bankruptcy sentence have already expired); (2) the applicant shall not have entered into judicial reorganization during the previous five years; and (3) the applicant, its controlling shareholders and its managers shall not have been convicted of any bankruptcy crime in the past.	Any creditor; debtor; spouse; any heir of the debtor; administrator of a will; debtor's shareholder. Only debts over 40 minimum wages justify the request of bankruptcy for one of the debtor's creditors. Moreover, the debt must be represented by a liquid obligation under a protested execution instrument or instruments.
Is shareholder's consent required to commence proceedings?	Yes (please see above)	Yes (please see above)	This depends on who filed for bankruptcy (please see above).
Is there an ability to consolidate group estates?	The law does not state such possibility, but it is a common practice.	The law does not state such possibility, but it is a common practice. Courts are trying to fix some requirements. Recent decisions establish that the following requirements must be fulfilled in order to consolidate debts: (i) same managers for the different debtors; (ii) similarity of shareholders among the debtors; (iii) existence of a control/ dependence relation among the debtors; (iv) existence of cross-guarantees offered by the debtors; and (v) confusion of assets among the debtors.	No, except in the case of piercing of the corporate veil whereby a shareholder is included in the process (i.e., it is also declared bankrupted). A court may pierce a corporate veil and hold shareholders personally liable for the obligations of a company in the case of abuse of the corporate veil, characterized by a deviation from the lawful purposes of a company or commingling of assets of a company and its shareholders.
Is there any court involvement?	It could be if the debtor requests the ratification of the agreement in order to bind it to all the creditors that are in the same situation as those who signed it (i.e., in the same class).	Yes.	Yes.

BRAZIL	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
Who manages the debtor?	The debtor retains its powers to appoint management.	The debtor retains its powers to appoint management. However, management can be removed if the managers of the company, for example: (i) acted with malice, simulation or fraud against the interests of their creditors; (ii) have been convicted of a crime committed under previous judicial reorganization/bankruptcy or a crime involving property, public welfare or economic policy provided for by applicable law.	The court appoints a trustee that will be in charge of the liquidation.
What is the level of disclosure of process to voting creditors?	A plan is presented and discussed between creditors and the debtor.	Prior to the approval of the plan, it is attached to the dockets and discussed by creditors in the general creditors' meeting.	N/A. Creditors will not vote in this procedure. The judicial administrator will seize all of the assets and sell them, and the proceeds will be split between creditors according to the payment order.
What entities are excluded from customary insolvency or reorganization proceedings, and what legislation applies to them?	A public company and joint stock company; public or private financial institution, credit union, trust, complementary pension entity, operator company of the health insurance company, insurance company, capitalization society and other legally equivalent to the above entities. The legislation that applies to financial companies is Brazilian Law 6024/1974.	A public company and joint stock company; public or private financial institution, credit union, trust, complementary pension entity, operator company of the health insurance company, insurance company, capitalization society and other legally equivalent to the above entities. The legislation that applies to financial companies is Brazilian Law 6024/1974.	Public company and joint stock company; public or private financial institution, credit union, trust, complementary pension entity, operator company of the health insurance company, insurance company, capitalization society and other legally equivalent to the above entities. The legislation that applies to financial companies is Brazilian Law 6024/1974
How long does it generally take for a creditor to commence the procedure?	N/A, since it is a proceeding available to debtors.	N/A, since it is a proceeding available to debtors	A creditor can apply for the opening of insolvency proceedings. Between the application from the creditor and the initiation of the insolvency proceedings by the court, it used to take one week (in such period, the court will analyze if the legal requirements have been fulfilled).

BRAZIL	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
EFFECT OF PROCESS			
Does the debtor remain in possession with continuation of incumbent management control?	Yes.	Yes. Debtor management retain their powers, which are exercised under the supervision of the court and the court-appointed judicial administrator. In some circumstances, the management is replaced (please see the answer above to the question related to management of the debtor).	No.
What is the stay/moratorium regime (if any)?	N/A.	The stay period is 180 days, but the judge can extend this period.	N/A.
Is there a provision for debtor in possession super-priority financing?	No.	Although there is no specific provision regarding a DIP, all the loans granted during the processing of the judicial reorganization have super-priority in case there is a bankruptcy, i.e., the claims related to those loans would be classified in first place in case there is a bankruptcy. Note, however, that all obligations incurred during the judicial reorganization will have the same benefit. In practical terms, the super-priority will be classified according to the payment order provided in the law.	No.
Can procedure be used to implement debt-to-equity swap?	Yes.	Yes.	N/A.
Are third-party releases available?	Yes.	Yes.	Yes. However, the release has to be authorized by the Court.
Are the proceedings recognised abroad?	The domestic law does not adopt the version of UNCITRAL or other applicable conflict-of-law principles and/or treaties for other countries.	The domestic law does not adopt the version of UNCITRAL or other applicable conflict-of-law principles and/or treaties for other countries.	The domestic law does not adopt the version of UNCITRAL or other applicable conflict-of-law principles and/or treaties for other countries.
Has the UNCITRAL Model Law been adopted?	No.	No.	No.

BRAZIL

	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
How long, complex and expensive is the process?	This is difficult to predict since the extrajudicial reorganization proceeding is an out-of-court process. In the cases that we have worked on, the process lasted six months.	The Bankruptcy Law provides that the judicial reorganization proceeding must finish within two years as of its filling. From a practical perspective, the process lasts 3-5 years. The process is costly.	It could last more than 10 years.
Is there a mandatory set-off of mutual debts on insolvency?	No.	No.	Yes.
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	Yes.	No. However, bilateral agreements executed between a third party and the debtor are not automatically terminated by the bankruptcy and may be complied with by the trustee if it reduces or avoids damages to the insolvent entity.
OTHER FACTORS			
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	A company is not obligated to file for an extrajudicial reorganization proceeding.	In relation to corporations, there are decisions stating that the directors have the fiduciary duty to file for judicial reorganization The directors may be condemned to pay indemnification to the company.	In relation to corporations, there are decisions stating that the directors have the fiduciary duty to file for bankruptcy. The directors may be condemned to pay indemnification to the bankruptcy estate.

BRAZIL	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
What is the order of priority of claims?	N/A.	There is no order of priority of the claims during a judicial reorganization proceeding. Note, however, that the labor creditors must be paid within one year after the approval of the plan.	The following order will apply: (i) costs related to the insolvency/bankruptcy procedure, including costs related to continuing the bankrupt company (e.g., labor costs that arose after the bankruptcy proceedings have been initiated) "extraconcursais" credits; (ii) labor claims (limited to 150 minimum wages for each employee) and occupational accident claims; (iii) secured credits; (iv) tax claims; (v) special privilege credits (e.g., costs related to the construction of buildings and costs related to rescuing goods); (vi) general privilege credit (e.g., costs for the funeral of the debtor and costs related to their domestic servants); (vii) unsecured credits; (viii) contractual penalties and fines, including tax penalties; and (ix) subordinated credit (e.g., the credits of the partners of the company and the managers of the company who do not have an employment relationship with the debtor).
Are there any pension liabilities?	N/A.	Pension liabilities can be considered to be labor and, as a consequence, be subjected to the same rules.	Pension liabilities can be considered to be labor and, as a consequence, be subjected to the same rules.
Is it possible to challenge prior transactions?	N/A.	Yes.	Yes.
Is state support for distressed businesses available?	No.	Not directly. However, for debtors that are under a judicial reorganization, there is the possibility to pay outstanding tax debts in 84 installments	No.

BRAZIL	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy	Preventive Negotiation
COVID-19				
Is state support for distressed businesses available?	No.	No.	No.	No.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	The Brazilian National Council of Justice issued Recommendation no. 63, which is a list of some measures to be taken in judicial reorganization lawsuits to guide the judges and the state courts on how to deal with some specific matters related to COVID-19. These recommendations are not mandatory. Regarding extrajudicial reorganization proceedings, Recommendation no. 63 only suggests that the judges grant priority to decide issues related to the withdrawal of amounts deposited in the court records on behalf of creditors or companies under extrajudicial reorganization.	The Brazilian National Council of Justice issued Recommendation no. 63, which is a list of some measures to be taken in judicial reorganization lawsuits to guide the judges and the state courts on how to deal with some specific matters related to COVID-19. These recommendations are not mandatory. Regarding judicial reorganization proceedings, Recommendation no. 63 suggests that the judges: (i) grant priority to decide issues related to the withdrawal of amounts deposited in the court records on behalf of creditors or companies under judicial reorganization; (ii) suspend creditors' meetings but suggests it occurs by electronic means; (iii) extend the stay period (e.g., extend the suspension to file new lawsuits against the debtor or to continue pending lawsuits); (iv) authorize the debtor to present an amendment to approved plans (some requirements apply for such amendment); and (v) carefully review requests of converting judicial reorganization into bankruptcy due to the breach of obligations provided in an approved plan.	The Brazilian National Council of Justice issued Recommendation no. 63, which is a list of some measures to be taken in judicial reorganization lawsuits to guide the judges and the state courts on how to deal with some specific matters related to COVID-19. These recommendations are not mandatory. Regarding bankruptcy, Recommendation no. 63 only suggests that the judges grant priority to decide issues related to the withdrawal of amounts deposited in the court records on behalf of creditors or bankruptcy companies.	N/A. This procedure does not exist in the current Brazilian Law of Judicial Reorganization and Bankruptcy.

BRAZIL

	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy	Preventive Negotiation
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	Yes. There is a Bill of Law ("**PL no. 1,397/2020**") that suggests the following changes: (i) the three-fifths quorum required by the law to have the plan in the extrajudicial reorganization binding to all the creditors of that specific class shall be reduced to one-half plus one of the credits subject to such plan; (ii) the obligations set forth in the extrajudicial reorganization plan already approved will not be due from the debtor for a period of 120 days; (iii) fix a stay period (e.g., period of time during which it is not possible to file new lawsuits against the debtor or to continue pending lawsuits); (iv) the possibility of requesting extrajudicial reorganization even if the debtor has already requested it or judicial reorganization in the past five years (which, nowadays, is prohibited); (v) the possibility of filing an amendment to the plan that has already been approved and ratified by the court; (vi) the inclusion of new creditors that were not subject to the extrajudicial reorganization by the time it was filed (and, thus, were not encompassed by the previous plan).	Yes. PL no. 1,397/2020 suggests the following changes: (i) refrain creditors from enforcing their rights in relation to co-obligors, guarantors and third-party obligors; (ii) refrain the judge from declaring the debtor's bankruptcy for non-compliance with the judicial reorganization plan; (iii) the obligations set forth in the judicial reorganization plans already approved will not be due from the debtor for a period of 120 days; (iv) creditors cannot request the debtor's bankruptcy based on non-compliance of the plan during this moratorium period; (v) the possibility of requesting judicial reorganization even if the debtor has already requested it or extrajudicial reorganization in the past five years (which, nowadays, is prohibited); (vi) the possibility of filing an amendment to the plan that has already been approved and ratified by the court; (vii) inclusion of new creditors that were not subject to the judicial reorganization by the time it was filed (and, thus, were not encompassed by the previous plan).	Yes. PL no. 1,397/2020 suggests changing the minimum amount to request the bankruptcy of a debtor: instead of the criteria of 40 minimum wages (which is around BRL 41,560 nowadays), it would change to BRL 100,000.	PL no. 1,397/2020 creates this procedure. A debtor who proves a reduction equal to or greater than 30% of their billing, compared to the average for the last quarter, may file a voluntary law called "preventive negotiation." By the time of the filing of such request, the judge must analyze whether the party is an economic agent and whether there was a 30% reduction in revenues — criteria for granting the request. If so, the judge will determine the suspension of the lawsuits against the debtor for 60 days and he/she may appoint a negotiator, whose scope of work and payment will be made by the debtor. The negotiator can be any person, individual or legal entity, with recognized professional capacity. After 60 days, the debtor, or the appointed negotiator, must present a report on the activities carried out, which will determine the closing of the procedure. During the preventive negotiation period, the debtor may enter, regardless of judicial authorization, into agreements with any financing agent, including with its creditors, shareholders or affiliates, to support restructuring and asset preservation costs. If the debtor requests an extension of the preventive negotiation term and the requirements for granting judicial reorganization are met, the request will be immediately converted into judicial reorganization and the period of 60 days of suspension will be deducted from the stay period provided for in the Brazilian Law of Judicial Reorganization and Bankruptcy.

UPDATED MAY 6, 2020

CANADA

CANADA	Plan of arrangement (Companies' Creditors Arrangement Act (CCAA))	Restructuring or liquidation (Bankruptcy and Insolvency Act (BIA))
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Yes.	Yes.
What is the nature of the process?	The CCAA offers a court-driven process that is a flexible and powerful tool for restructuring or liquidating corporations in financial difficulty. As a first step, the insolvent company will make an application to the court under the CCAA. The court will make an initial order granting the insolvent company a stay of proceedings. The insolvent company will then attempt to develop a plan of arrangement or compromise for its creditors. There are no restrictions on what terms this plan may include. Frequently, there is an offer to pay a fixed amount divisible among creditors, either as a lump sum or over time. A conversion of debt to shares is also common. Once the company develops the plan, it will be put to the creditors for approval and it must be sanctioned by the court. If a plan is not approved, the insolvent company can pursue other restructuring options. If there is none, the senior secured creditor or unsecured creditors will typically seek to lift the stay of proceedings to exercise their available remedies against the insolvent company. This typically results in the insolvent company being placed into bankruptcy.	The BIA provides for both restructuring and bankruptcies of insolvent individuals and corporations. The BIA is more rule-based than the CCAA and it was designed to create orderly and predictable liquidations or restructurings. A debtor seeking to restructure under the BIA will file a proposal or a notice of intention (NOI) to file a proposal. A trustee will be appointed to oversee the restructuring process. The creditors and the court must approve the proposal. If the proposal is not approved, the debtor will automatically go into bankruptcy. The bankruptcy of an individual under the BIA entails liquidation and the distribution of assets followed by a discharge from any debts existing at the time of bankruptcy. It is the same process for a corporation but there is no discharge. Upon bankruptcy, a trustee becomes vested with all of the bankrupt's property, subject to the rights of secured creditors. Once the trustee has liquidated the assets, the trustee distributes the proceeds to creditors based on the priorities set out in the BIA.

CANADA	Plan of arrangement (Companies' Creditors Arrangement Act (CCAA))	Restructuring or liquidation (Bankruptcy and Insolvency Act (BIA))
What is the solvency requirement?	To initiate a CCAA restructuring, the corporation must be insolvent and must have, either alone or with its affiliates, at least CAD 5 million of debt. "Insolvent" is not defined in the CCAA and the concept has been broadly interpreted to enable greater restructuring opportunities.	"Insolvent" for the purposes of the BIA is an individual or a company with liabilities to creditors exceeding CAD 1,000 and: (i) for any reason is unable to meet its obligations as they generally become due (ii) has ceased paying current obligations in the ordinary course of business as they generally become due (iii) has aggregate property that is not, at a fair valuation, sufficient or — if disposed of at a fairly conducted sale under a legal process — would not be sufficient to enable the payment of all obligations, due and accruing due
Is there a requirement to demonstrate COMI ("centre of main interests")?	No. The CCAA applies to any legal entity or person that is incorporated in Canada (either federally or provincially), that has assets in Canada or that carries on business in Canada. There is no additional need to demonstrate COMI.	No. The BIA applies to any legal person or entity that resides or has property or business in Canada. There is no additional need to demonstrate COMI.
Is restructuring of both secured and unsecured claims possible?	Yes.	In certain circumstances, it is possible to restructure secured claims. However, in most cases, it is not possible to compromise secured claims without the consent of the secured party.
Is there a classification of creditors and shareholders?	Yes. Classes of creditors are typically formed by the insolvent company as part of the proposed plan of arrangement. A "commonality of interest" test is used to group creditors into classes of similarly situated claims. Creditors can ask the court to revise creditor classifications if the classes are being used by the insolvent company to illegitimately swamp a dissenting group with unique rights.	Yes. In the context of a restructuring during an NOI, the classification of claims will be part of the proposal. The BIA requires that classes of secured creditors be formed according to their "commonality of interest." Unsecured creditors may also be divided into classes. All creditors with equity claims must be in the same class, unless the court orders otherwise.
Is there a requirement for voting approvals by shareholders?	No.	No.
Is there a requirement for voting approvals by shareholders' creditors?	No.	No.

CANADA	Plan of arrangement (Companies' Creditors Arrangement Act (CCAA))	Restructuring or liquidation (Bankruptcy and Insolvency Act (BIA))
Is there an ability to bind minority dissenting creditors?	Yes, but only in limited circumstances. A plan must be approved by a double majority of creditors (a majority of creditors in the class and two-thirds of the creditors in value within that class). This means that a dissenting creditor can only be bound if: a. it is placed in a class of creditors where it does not have a veto b. that class approves the plan despite the creditor's negative vote c. a majority of creditors in other classes approve the plan d. the court subsequently sanctions the plan	Yes, but only in limited circumstances. A restructuring must be approved by a double majority of creditors (a majority of creditors in the class and two-thirds of the creditors in value within that class). This means that a dissenting creditor can only be bound if: a. it is placed in a class of creditors where it does not have a veto b. that class approves the proposal despite the creditor's negative vote c. a majority of creditors in other classes approve the proposal d. the court subsequently sanctions the proposal
COMMENCING THE PROCESS		
Who can commence?	The insolvent company commences the proceeding through an application to the court.	A restructuring can be commenced by the debtor with the filing of a proposal or an NOI to file a proposal by a trustee or receiver that has already been appointed over the debtor, or (in rare cases) by a creditor. A bankruptcy can be commenced either by the debtor itself with the filing of a voluntary assignment into bankruptcy or by one or more creditors owed at least CAD 1,000 through an application to the court for a bankruptcy order.
Is shareholders' consent required to commence proceedings?	No.	No.
Is there an ability to consolidate group estates?	Yes. The CCAA can apply to a debtor company or a group of affiliated debtor companies. It is rare for a Canadian court to substantively consolidate the estates of multiple debtors.	Yes.
Is there any court involvement?	A CCAA restructuring is supervised by the court — often by a single judge — from beginning to end. The court will appoint an independent party to monitor and supervise the restructuring. The monitor is a licensed trustee whose main function is to report to the court and creditors on the business and financial status of the insolvent company and to assist the insolvent company in developing a restructuring plan. Once appointed, the monitor becomes an officer of the court.	Yes. The court will be involved from the commencement of a bankruptcy or restructuring under the BIA. The court must approve any significant transaction that is outside the ordinary course of business while a company is going through a restructuring.

CANADA

	Plan of arrangement (Companies' Creditors Arrangement Act (CCAA))	Restructuring or liquidation (Bankruptcy and Insolvency Act (BIA))
Who manages the debtor?	The debtor (through its management) remains in control of its assets and operations, but the court-appointed monitor supervises it.	In a bankruptcy, the debtor's property is entrusted to the bankruptcy trustee. The trustee is an officer of the court with power over the assets and they are charged with collecting and liquidating the assets of the bankrupt with a view to distributing proceeds to creditors. In a restructuring during an NOI, the debtor's directors continue to manage the company. The trustee plays a less active role and they will not be involved in the management of the debtor company, except for transactions outside the ordinary course.
What is the level of disclosure of the process to voting creditors?	Throughout the restructuring process, the monitor provides regular reports to the court and creditors on the business and status of the insolvent company and the progress of the restructuring. In order to fulfill these duties, the monitor has full access to the debtor company's property, books and records.	The BIA stipulates certain notices that must be sent to creditors, including a statement of the debtor's assets and liabilities and a list of all creditors owed CAD 250 or more.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Banks, trust companies, insurance companies, loan companies, building societies and certain trading companies are excluded from the CCAA regime. These entities may only commence proceedings under the Winding-up and Restructuring Act. Individuals and smaller business entities with less than CAD 5 million in liabilities are subject to the BIA.	The BIA is broadly available, but it does not apply to entities that are subject to the Winding-up and Restructuring Act.
How long does it generally take for a creditor to commence the procedure?	Creditors do not typically commence proceedings under the CCAA against an insolvent debtor.	If they are owed at least CAD 1,000, a creditor may commence proceedings as soon as the debtor has committed one of the statutorily defined "acts of bankruptcy."
EFFECT OF PROCESS		
Does the debtor remain in possession with continuation of incumbent management control?	The debtor company normally continues operations while it attempts to restructure. Incumbent management may remain in control but it is increasingly common for the senior lenders or interim financiers to require that an agreed chief restructuring officer be appointed to direct the restructuring process, since it is unusual for existing management to have the specialized expertise needed to guide a company through a successful restructuring process.	In a restructuring in an NOI, the directors retain control of the debtor's assets and oversee the development of the proposal. In a bankruptcy under the BIA, the directors give up control of the debtor's assets to the bankruptcy trustee and retain only limited powers.

CANADA

	Plan of arrangement (Companies' Creditors Arrangement Act (CCAA))	Restructuring or liquidation (Bankruptcy and Insolvency Act (BIA))
What is the stay/moratorium regime (if any)?	If the court is satisfied that the insolvent company has a reasonable prospect of restructuring, it will grant the insolvent company an initial stay of proceedings of up to 30 days, which provides comprehensive protection from creditors. Typically, the stay of proceedings is extended upon further applications by the insolvent company, often resulting in a stay period spanning many months or, in some cases, several years. There is no fixed limit on the extension of the stay of proceedings, so long as the extension is not prejudicial to the creditors as a whole and a viable process is underway. Any affected party may oppose or seek to lift the stay of proceedings. A party seeking to lift the stay must prove that they are likely to be materially prejudiced by the continuance of the stay or that it is equitable on other grounds that the stay be lifted. Absent compelling reasons, courts are normally reluctant to lift the stay.	In an NOI restructuring, an automatic stay of proceedings applies to secured and unsecured creditors as soon as the proposal or notice of intention to make a proposal is filed. There are exceptions to the stay for certain secured creditors. The initial stay for a restructuring is only 30 days but may be extended by the court up to an additional five months. In a bankruptcy under the BIA, the automatic stay of proceedings applies only to unsecured creditors. A limited stay against secured creditors may be sought by the bankruptcy trustee to preserve the value of the debtor's estate, but secured creditors are generally free to enforce their security outside the bankruptcy process. In certain circumstances, the stay of proceedings may be lifted to permit actions by creditors to proceed.
Is there a provision for debtor-in-possession super priority financing?	Yes.	Yes.
Can the procedure be used to implement a debt-to-equity swap?	Yes. It is fairly common to see a debt-to-equity conversion as part of a plan of arrangement or compromise.	Yes. Debt-to-equity conversion may be part of a restructuring proposal under the BIA.
Are third-party releases available?	Yes. Subject to approval by the court, a debtor company may enter into third-party releases as part of its plan of arrangement or compromise in a CCAA proceeding. Third-party releases must be reasonably connected to the restructuring. Courts will generally approve a third-party release if it is fair and reasonable in the circumstances and if the rights of non-releasing creditors are not compromised.	Yes. A restructuring proposal may provide releases for non-debtor third parties as long as the releases are: (i) rationally related to the proposal; (ii) essential to the success of the proposal; (iii) not overly broad or offensive to public policy; and (iv) the parties benefiting from the releases have contributed to the proposal.
Are the proceedings recognized abroad?	Yes. Proceedings under the CCAA can be recognized in other jurisdictions, subject to their respective domestically adopted versions of the UNCITRAL Model Law, bilateral or multilateral treaties, or conflict of laws principles.	Yes. Proceedings under the BIA can be recognized in other jurisdictions, subject to their respective domestically adopted versions of the UNCITRAL Model Law, bilateral or multilateral treaties, or conflict of laws principles.

CANADA	Plan of arrangement (Companies' Creditors Arrangement Act (CCAA))	Restructuring or liquidation (Bankruptcy and Insolvency Act (BIA))
Has the UNCITRAL Model Law been adopted?	Yes. A modified version of the Model Law was adopted in 2009.	Yes. A modified version of the Model Law was adopted in 2009.
How long, complex and expensive is the process?	The complexity and cost of a CCAA restructuring will depend on the nature of the debtor company and its objectives. Proceedings can range from short stays meant to give a company "breathing room" to years-long affairs with multiple interim steps and court appearances. Typically, CCAA proceedings are more expensive than BIA restructuring proceedings.	Compared to restructuring under the CCAA, the procedures offered by the BIA are shorter, simpler and less expensive. However, there is less flexibility and discretion in the BIA regime.
Is there a mandatory set-off of mutual debts on insolvency?	Yes. The CCAA provides that the law of set-off applies to all claims made against the insolvent company and to all actions by the insolvent company to recover money.	Yes. The BIA provides that the law of set-off applies to all claims made against the insolvent company and to all actions by the insolvent company to recover money.
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	Yes. It is common during an NOI proceeding for the debtor company to continue operations. However, it is unusual in a bankruptcy. If the debtor continues to carry on business, it will do so under the control of the bankruptcy trustee.
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	No. Canadian law does not prohibit companies from carrying on business while insolvent. Directors may face liability under Canadian law for non-payment of statutorily required remittances if they authorize the payment of dividends while the company is insolvent or if the company fails to pay certain statutorily specified employee entitlements. The CCAA authorizes the court to indemnify directors and officers against post-filing liabilities to encourage them to remain in office throughout the restructuring.	No. The same as under a CCAA proceeding.

CANADA

	Plan of arrangement (Companies' Creditors Arrangement Act (CCAA))	Restructuring or liquidation (Bankruptcy and Insolvency Act (BIA))
What is the order of priority of claims?	The CCAA creates statutory priorities for claims under the Income Tax Act, unpaid employee wages, pension plan contributions and certain environmental liabilities. Secured creditors are also entitled to deal with the collateral of the debtor secured to them. Aside from those statutory restrictions, the CCAA provides flexibility for the court to approve a compromise of all other creditors' claims. Claims arising from the purchase or sale of equity of an insolvent company are subordinate to all other claims. No proposal or plan of arrangement that provides for the payment of an equity claim may be approved by the court unless all other claims are paid in full. Courts also have the power under the CCAA to make orders securing the debtor's costs arising from the proceedings, such as the costs of financial, legal and other professional advisers and court-appointed officials such as trustees, receivers or monitors.	The BIA contains many of the same statutory super priorities as the CCAA, including claims under the Income Tax Act, unpaid employee wages and pension plan contributions. Like the CCAA, the BIA precludes the payment of any equity claims until all other claims are satisfied. Unlike the CCAA, the BIA has a detailed, mandatory scheme of priority for distribution out of a bankrupt's estate. Generally, super priority claims will be paid out first, followed by secured creditors, preferred creditors and unsecured creditors.
Are there any pension liabilities?	Yes. Under the CCAA, the court cannot approve a plan of arrangement or compromise or an asset sale unless it is satisfied that statutorily required payments for unpaid wages and pension plan contributions will be made.	Yes. The BIA does not permit the court to approve a restructuring plan unless it is satisfied that the debtor can and will make all payments that are statutorily required for unpaid wages and unpaid pension plan contributions.
Is it possible to challenge prior transactions?	Yes. Prior transactions can be challenged under the CCAA and other statutes if they have the effect of preferring one creditor or party to other stakeholders. In general, this applies only to transactions entered into during or shortly before the insolvency where there is an intention to diminish the estate for the benefit of one creditor over the others. A monitor appointed under the CCAA may avail themselves of the BIA provisions for setting aside prior transactions.	Yes. The three main types of prior transactions that may be challenged in BIA proceedings are: 1. transactions at an undervalue (i.e., where the debtor received less than the fair market value of the asset in consideration) 2. transactions that have the effect of preferring one creditor or party to others (as under the CCAA) 3. dividends paid out during the time that a corporate debtor is insolvent

CANADA

Plan of arrangement (Companies' Creditors Arrangement Act (CCAA))

Restructuring or liquidation (Bankruptcy and Insolvency Act (BIA))

COVID-19

Is state support for distressed businesses available?

There is both federal (across Canada) and provincial/territorial support, which varies across the country. The following is a summary of federal support programs as of 16 April 2020.

Wage subsidy

1. Canada Emergency Wage Subsidy (CEWS): This subsidy, available to employers of all sizes and across all sectors who have suffered a drop in gross revenues of at least 15% in March and 30% in April and May will cover 75% of an employee's wages up to CAD 847 per week. The CEWS program will run from 15 March to 6 June 2020.
2. Temporary Wage Subsidy: Qualifying employers[1] are eligible for a temporary wage subsidy for a period of three months (i.e., from 18 March 2020 to 19 June 2020). The subsidy is equal to 10% of remuneration paid during that period, up to a maximum subsidy of CAD 1,375 per employee and CAD 25,000 per employer.
3. Work-Sharing Program: Special measures have been adopted to assist employers when using the program, including, notably, the maximum duration of the program will be extended from 38 weeks to 76 weeks for employers affected by COVID-19.[2]

Rent subsidy

1. Canadian Emergency Commercial Rent Assistance (CECRA): Announced on 16 April 2020, the CECRA program aims to provide rent support to small businesses impacted by COVID-19. While official details have not yet been released, the CECRA program is intended to provide loans (including forgivable loans) to property owners who, in turn, will lower or forgo rent for affected businesses for the months of April (retroactively), May and June.

1 Qualifying employers are individuals (excluding trusts), partnerships, non-profit organizations, registered charities or Canadian-controlled private corporations (including cooperative corporations) that have existing business numbers and payroll program accounts with the CRA as of 18 March 2020 and pay salary, wages, bonuses or other remuneration to eligible employees.

2 The Work-Sharing Program allows employers and employees to avoid layoffs when there is a temporary decrease in business activity beyond the control of the employer. The program provides employment insurance benefits to eligible employees who agree to reduce their normal working hours and share the available work while their employer recovers.

CANADA

Plan of arrangement (Companies' Creditors Arrangement Act (CCAA))

Restructuring or liquidation (Bankruptcy and Insolvency Act (BIA))

Tax

1) The Canada Revenue Agency (CRA), the federal tax ministry, will allow all businesses to defer, until after 31 August 2020, the payment of any income tax amounts owed on or after 18 March 2020 and before 1 September 2020. This relief applies to tax balances due, as well as installments, under Part I of the Income Tax Act. No interest or penalties will accumulate on these amounts during this period.
2) For the vast majority of businesses, the CRA will temporarily suspend audit interaction with taxpayers and representatives.
3) The CRA will allow all businesses (including self-employed individuals) to defer GST/HST payments and customs duties owed on their imports until 30 June 2020.

Credit financing and funding

1) The Business Development Bank of Canada (BDC) and Export Development Canada (EDC), both federal Crown financial institutions, will provide CAD 40 billion of support largely targeting small- (< 100 employees) and medium-sized businesses (< 500 employees) through the Business Credit Availability Program (BCAP). BDC and EDC will cooperate with private sector lenders to coordinate on credit solutions for businesses.
2) Small- and medium-sized enterprises unable to secure funding through the BCAP or wage subsidies through the CEWS may apply for funding under the newly implemented IRAP Innovation Assistance Program ran by the National Research Council of Canada.
3) Near-term credit available to farmers and the agri-food sector will be increased through the launch of Farm Credit Canada.
4) In order to support businesses, the minister of finance will be empowered to determine the limit of the Canada Account, which is administered by EDC, allowing the government to begin providing additional support to Canadian companies through loans, guarantees or insurance policies.
5) The federal government launched the Canada Emergency Business Account, which provides qualifying business owners with an interest-free, government-backed loan of CAD 40,000 for businesses that paid between CAD 20,000 and CAD 1.5 million in total payroll in 2019.
6) The Bank of Canada cut the interest rate to 0.25% on 27 March 2020 to support the Canadian economy.
7) The Office of the Superintendent of Financial Institutions, Canada's federal financial institutions regulator, lowered the Domestic Stability Buffer by 1.25% to 1% of risk-weighted assets, which will allow Canada's major banks to inject CAD 300 billion of additional lending into the economy.
8) The federal government will provide immediate and temporary relief for federally regulated defined benefit pension plan sponsors on solvency payment requirements for the remainder of 2020.

	Plan of arrangement (Companies' Creditors Arrangement Act (CCAA))	Restructuring or liquidation (Bankruptcy and Insolvency Act (BIA))

Market liquidity

1) The federal government launched the Insured Mortgage Purchase Program, consisting of a purchase of up to CAD 50 billion of insured mortgage pools through the Canada Mortgage and Housing Corporation, to provide long-term stable funding to banks and mortgage lenders, to help facilitate continued lending to Canadian consumers and businesses, and to add liquidity to Canada's mortgage market.
2) The Bank of Canada announced that it will implement various strategies, including:
   a. adjusting its market liquidity operations to maintain market functioning and credit availability
   b. broadening eligible collateral for its term repurchase agreement to include the full range of collateral eligible under the Standing Liquidity Facility, with the exception of the non-mortgage loan portfolio
   c. providing support to Canada's mortgage bond market, including purchases of such bonds in the secondary market

Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?

Some protections have been extended to individuals (e.g., protection from eviction), but there are no formal restrictions on creditor actions against businesses.

Is further reform of the insolvency regime being discussed/anticipated? If so, give details.

As of 16 April 2020, no COVID-19 related insolvency reforms are planned. To date, guidance from the insolvency regulator has been focused on measures to keep the insolvency system functioning during the closures caused by COVID-19.

Both the CCAA and the BIA were recently amended and the following noteworthy changes came into force on 1 November 2019:

- Require participants in insolvency proceedings to act in good faith.
- Provide for the possibility of the court-ordered disclosure of a creditor's real economic interest in an insolvent company.
- Explicitly permit management to consider the interests of workers and pensioners when fulfilling their corporate duties.
- Impose director liability in appropriate cases for executive compensation payments in the year leading up to an insolvency.
- Limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company (length of initial stay reduced from 30 to 10 days and limit relief to that which is reasonably necessary for the continued operations of the debtor company in the ordinary course of business).
- Exempt assets held in registered disability savings plans from creditor claims in bankruptcy.
- Extend current intellectual property (IP) license rights to insolvency scenarios such as bankruptcies, receiverships and asset sales where there is uncertainty in the law regarding the protections for IP licenses.

UPDATED MAY 5, 2020

CHILE

CHILE	Liquidation proceedings	Reorganization proceedings
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Generally, creditors can take security interest over all assets of the debtor under Chilean law. The law recognizes a special preference for such secured creditors. Taking security interest requires the specification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, non-possessory pledge and possessory pledge.	Generally, creditors can take security interest over all assets of the debtor under Chilean law. The law recognizes a special preference for such secured creditors. Taking security interest requires the specification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, non-possessory pledge and possessory pledge.
What is the nature of the process?	A court process leading to the sale of the debtor's assets, payment of its debts, and ultimate dissolution of the debtor.	A court process leading to the reorganization of the debtor's assets and liabilities in order to avoid its liquidation.
What is the solvency requirement?	For a creditor to start liquidation proceedings, its claim must be grounded on any of the following circumstances: (i) The debtor must have suspended payment of one or more obligations in favor of the creditor and the same is evidenced in an executive title (in which case the claim can only be filed by the creditor whose debt has not been paid). (ii) There are two or more past-due executive titles against the debtor, originating from different obligations, at least two enforcement proceedings have already been initiated and the debtor has not presented sufficient assets to pay such obligations (in which case any creditor could file the insolvency claim). (iii) The debtor or its managers cannot be found, their offices are closed, and they have not appointed an agent with enough authority to perform the company's obligations and answer new claims.	The debtor must provide certain background documents/information about its situation of financial distress, including a list of assets, liens and a certificate of its debts issued by an independent auditor, registered in the Registry of External Auditors of the Superintendence of Securities and Insurance.

CHILE

	Liquidation proceedings	Reorganization proceedings
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes, only under general rules, to define the jurisdiction of the court.	Yes, only under general rules, to define the jurisdiction of the court.
Is restructuring of both secured and unsecured claims possible?	No. The liquidation of a company is a terminal process that does not allow for the restructuring of secured and unsecured claims.	Yes. Reorganization proceedings are flexible, allowing the restructuring of both secured and unsecured claims.
Is there a classification of creditors and shareholders?	Yes. There are creditors with voting rights and creditors without voting rights; secured creditors and unsecured creditors; and creditors related to the debtor and unrelated creditors. Only creditors whose credits are recognized are entitled to vote at the meetings. In the case of creditors whose credits are not recognized, the court could determine their provisional right to vote. Shareholders are only considered creditors if they have a credit against the debtor that is different from their equity. They are classified as related persons, whose credit is considered an unsecured credit, without preference to collect their debts	Yes. There are creditors with voting rights and creditors without voting rights; secured creditors and unsecured creditors; and creditors related to the debtor and unrelated creditors. In addition, the reorganization agreement may create additional categories of creditors that allow each category to be treated differently. As a result, the debtor can make different payment proposals to each category of creditors provided that the proposal for each and all creditors of the same class or category is the same. Shareholders are considered creditors if they have a credit against the debtor (other than their shareholding equity).
Is there a requirement for voting approvals by shareholders?	No shareholder vote is required to start the process.	No shareholder vote is required to start the process.
Is there a requirement for voting approvals by shareholders' creditors?	No. In fact, shareholders — being related to the debtor — have no right to vote.	No.
Is there an ability to bind minority dissenting creditors?	Yes. Dissenting creditors are bound if the required creditor approvals are obtained.	Yes. Dissenting creditors are bound if the required creditor approvals are obtained.

CHILE

	Liquidation proceedings	Reorganization proceedings
COMMENCING THE PROCESS		
Who can commence?	(1) Voluntary liquidation: The debtor: the law allows the debtor to file for its own liquidation procedure if it complies with certain legal requirements on this matter. (2) Forced liquidation: Any creditor. The law permits any creditor to file a liquidation petition based on one of the following circumstances: (a) The debtor has ceased to comply with an obligation that is evidenced in an executive document (a type of document indicated in the law that evidences a debt, with respect to which a judicial trial is not required for its recognition).(b) The debtor has defaulted two or more payment obligations in executive documents; arising from different obligations, and two or more enforcing processes have already been initiated with respect to such documents; and the debtor has not presented sufficient assets to cover its debts. (c) The debtor or its representatives have fled the country or gone into hiding, leaving their offices or place of business closed with no one either appointed to manage the business so that the debtor can meet its obligations or invested with sufficient power to answer new lawsuits.	Only the debtor. The proceedings are initiated by submitting an application for reorganization of the debtor company to the competent court based on its financial distress.
Is shareholders' consent required to commence proceedings?	No.	No.
Is there an ability to consolidate group estates?	No.	No.
Is there any court involvement?	Yes, the competent court (which is the one that corresponds to the debtor's domicile) intervenes. If there are multiple competent courts in the same jurisdiction, the court of appeals shall assign the case to the one that specializes in insolvency matters.	Yes, the competent court (which is the one that corresponds to the debtor's domicile) intervenes. If there are multiple competent courts in the same jurisdiction, the court of appeals shall assign the case to the one that specializes in insolvency matters.
Who manages the debtor?	The settlement administrator (liquidator). They represent the debtor and are in charge of the administration and liquidation of their assets to make payments to creditors in the established order.	The overseer (interventor) shall monitor the process and the state of the debtor's business, and promote settlements between the debtor and its creditors.

CHILE

	Liquidation proceedings	Reorganization proceedings
What is the level of disclosure of the process to voting creditors?	The liquidation proceedings are open to the public, and any interested party can access them through the digital file on the judiciary web page. In addition, when the court so orders, the resolutions shall be published in the Insolvency Gazette, which is also open to the public.	The reorganization proceedings are open to the public, and any interested party can access it through the digital file on the judiciary web page. In addition, when the court so orders, the resolutions shall be published in the Insolvency Gazette, which is also open to the public.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	The Insolvency Law applies to all types of debtors. In any case, there are certain types of debtors, such as financial entities, insurance companies or investment services companies, that will also be subject to their specific legislation.	The Insolvency Law applies to all types of debtors. In any case, there are certain types of debtors, such as financial entities, insurance companies or investment services companies, that will also be subject to their specific legislation. There is an exception and limitation to the exercise of the right to vote of the persons related to the debtor; they will not enjoy the right to vote, nor will they be considered in the calculation of the respective quorum.
How long does it generally take for a creditor to commence the procedure?	A creditor can apply for the opening of liquidation proceedings. The insolvency court has to hear the debtor before initiating the liquidation proceedings. Between the application of the creditor and the initiation of the insolvency proceedings by the court, there is generally a minimum period of two to four weeks.	N/A.
EFFECT OF PROCESS		
Does the debtor remain in possession with continuation of incumbent management control?	No. The debtor is prevented from managing their own assets, except those of a non-attachable nature. The management of the attachable assets passes directly to the liquidation administrator, who has the authority vested by law to immediately take the protective actions deemed necessary to prevent the deterioration or destruction of any of the assets. However, the declaration of bankruptcy/liquidation does not transfer the title of the bankruptcy party's property to the creditors; the debtor is only prohibited from disposing of the property until the creditors' claims have been settled.	Commonly, the debtor remains in possession with continuation of incumbent management, unless agreed otherwise in the reorganization agreement.
What is the stay/moratorium regime (if any)?	After the commencement of insolvency proceedings, no enforcement proceedings can be started against the debtor and those previously started shall be stayed. However, this rule does not apply to secured creditors in respect of the enforcement of their pledges or mortgages. Such secured creditors may initiate or continue foreclosing actions independent from the liquidation proceedings.	A "financial protection period" lasts for 30 days from the date of the court's reorganization resolution. During that period, no enforcement proceedings can be started against the debtor on the grounds of the initiation of the reorganization proceeding, and those previously started shall be stayed. This prevents creditors from collecting the credits, accelerating debts, filing collection claims in court, etc. This period can be extended to 60 and 90 days if the creditors' meeting so agrees.

CHILE

	Liquidation proceedings	Reorganization proceedings
Is there a provision for debtor-in-possession super priority financing?	No.	Yes, in accordance with the terms and conditions of an approved reorganization plan. In addition, creditors that provide financing to the debtor during the reorganization proceedings may benefit from a super-priority.
Can the procedure be used to implement a debt-to-equity swap?	No.	Yes, in accordance with the terms and conditions of an approved reorganization plan.
Are third-party releases available?	No.	Yes, in accordance with the terms and conditions of an approved reorganization plan.
Are the proceedings recognized abroad?	Yes.	Yes.
Has the UNCITRAL Model Law been adopted?	Yes.	Yes.
How long, complex and expensive is the process?	The timing of the process varies. On average, liquidation proceedings can last a year or two. It will depend on how difficult it is to sell the debtor's assets. It is expensive as it involves lawyers' fees, liquidator fees and court fees.	The timing of the process varies. The approval of the reorganization plan should take a few months. The implementation of the reorganization plan may take several years. It is not as expensive as the liquidation proceedings, but it also involves lawyer, overseer and court fees.
Is there a mandatory set-off of mutual debts on insolvency?	No. Generally, the set-off of mutual debt between the debtor and the creditors is forbidden (except in a few cases): this prohibition is established to maintain the par condictio creditorum (equal treatment of creditors).	No.
Can a debtor continue to carry on business during insolvency proceedings?	Yes, but only in a specific case. The debtor's assets can be sold individually or altogether as an ongoing concern or economic unit. In this last case, the operations of the business will continue until its sale but under the administration of the liquidator.	The debtor can continue with its business, and even take out loans and carry out foreign trade operations. During this period, all agreements signed by the debtor remain in force and maintain their payment conditions. The debtor may not encumber or dispose of its assets, except for those whose disposal is proper to its business, or those that are strictly necessary for the normal development of their activity

CHILE

	Liquidation proceedings	Reorganization proceedings
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	There is no binding obligation on the debtor, its partners, directors or representatives to file for insolvency. Nevertheless, Chilean insolvency law affords creditors certain civil and criminal actions in the case of (i) inducement or aggravation of insolvency, (ii) hiding of assets or (iii) misleading accounting information. Generally, the debtor's representatives are not personally liable for actions challenged through an insolvency revocation action. However, to the extent that such actions involve one of the criminal offences referred to above, the representative would be personally liable for such criminal offence. Additionally, according to Chilean general corporate law, the representative could be personally liable for mismanagement vis-à-vis the insolvent company's shareholders or partners if the bad business situation was caused by their negligence or fraud.	N/A
What is the order of priority of claims?	1) preferred creditors established by law on account of the nature of the credit (e.g., labor or tax claims) or the holding of a perfected security interest (e.g., a mortgage or pledge) 2) unsecured creditors	1) privileged creditors with a superior right to payment established by law on account of the nature of the credit (e.g., labor or tax claims) or the holding of a perfected security interest (e.g., a mortgage or pledge) 2) unsecured creditors
Are there any pension liabilities?	Yes. Pension claims are "preferred credits" and rank ahead of unsecured claims in any distribution.	N/A
Is it possible to challenge prior transactions?	Yes. 1) any payment or disposal of assets made on terms different from those originally agreed, made within one year from the commencement of the insolvency procedure 2) any gratuitous agreement (e.g., a gift) or any onerous agreement where the debtor's counterparty was aware of the bad economic situation of the debtor and the agreement had a detrimental effect on other creditors, made within two years from the commencement of the insolvency procedure	N/A

CHILE

	Liquidation proceedings	Reorganization proceedings
COVID-19		
Is state support for distressed businesses available?	Yes, the state offers support to companies in difficulties, with a focus on trying to avoid the initiation of liquidation and reorganization proceedings, helping the companies' liquidity and solvency. Some of the measures adopted by the government to this date are the following: • Financing lines with state guarantees have been increased, which will allow Chilean banks to finance loans to companies for up to USD 24 billion in total (with a state guarantee of US 3 billion to those loans), which is equivalent to increasing the lines currently available by 20 times. The new line of credit with a state guarantee will limit the extraordinary credit risk generated by the state of emergency and will facilitate the conditions for banks to lend working capital to companies, for a period of up to 48 months, with a grace period of up to six months and for an equivalent amount of up to three months of sales. • Banks that lend these resources to the benefited companies, with state guarantees, must reprogram all the preexisting credits of the benefited debtor and postpone any amortization of their old credits until the new loans are fully paid. • Tax measures have been set forth that are focused on providing liquidity to small and medium size enterprises (SMEs), allowing them to respond to their financial obligations in the next months, with the purpose of preventing them from falling into bankruptcy. • Labor measures have been taken that focus on maintaining the employment relationship with the possibility of suspending the salary to employees, until the company recovers its previous activity levels, enabling the possibility of teleworking, in some cases. The payment of salaries will be made by using funds from unemployment insurance.	Yes, the state offers support to companies in difficulties, with a focus on trying to avoid the initiation of liquidation and reorganization proceedings, helping the companies' liquidity and solvency. Some of the measures adopted by the government are the following: • Financing lines with state guarantees have been increased, which will allow Chilean banks to finance loans to companies for up to USD 24 billion in total (with a state guarantee of US 3 billion to those loans), which is equivalent to increasing the lines currently available by 20 times. The new line of credit with a state guarantee will limit the extraordinary credit risk generated by the state of emergency and will facilitate the conditions for banks to lend working capital to companies, for a period of up to 48 months, with a grace period of up to six months and for an equivalent amount of up to three months of sales. • Banks that lend these resources to the benefited companies, with state guarantees, must reprogram all the preexisting credits of the benefited debtor and postpone any amortization of their old credits until the new loans are fully paid. • Tax measures have been set forth that are focused on providing liquidity to small and medium size enterprises (SME), allowing them to respond to their financial obligations in the next months, with the purpose of preventing them from falling into bankruptcy. • Labor measures have been taken that focus on maintaining the employment relationship with the possibility of suspending the salary to employees, until the company recovers its previous activity levels, enabling the possibility of teleworking, in some cases. The payment of salaries will be made by using funds from unemployment insurance.

CHILE

	Liquidation proceedings	Reorganization proceedings
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	Regarding the forced liquidation procedure, there is still no bill that modifies or restricts the creditors' right to request the mentioned procedure. However, some special measures have been introduced to carry out the liquidation, such as flexibility in the majority rules for the adoption of agreements, the possibility of hearings being held through videoconferences or some form of recognized electronic voting, the limitation to the execution of guarantees, the promotion of bankruptcy arbitration for the supposedly most complex cases (such as large companies, especially strategic ones), among others. There is no legislative project, but under comparative law, in the near future, it would be sought to legislate regarding the right of creditors to request the procedure of forced liquidation in consideration of the current contingency, seeking to avoid the bankruptcy of companies that may become viable again.	As it is a voluntary procedure, only the will of the debtor company matters, excluding the crediting of the will of the creditors at the beginning of the procedure. Consequently, no type of modification or restriction has been made to the actions of the creditors, but temporary measures have been implemented to carry out the procedure. Temporary measures consist of making the majority rules more flexible for the adoption of reorganization agreements, the possibility of hearings through videoconferences or the recognition of some form of electronic voting, facilitating extrajudicial or simplified reorganizations, limiting the termination of essential contracts (such as the lease or provision of basic services) or the execution of guarantees, among others.
Is further reform of the insolvency regime being discussed/anticipated? If so, give details.	Yes. There is a bill, initiated by the President of the Republic, that establishes measures to boost productivity and entrepreneurship, and that establishes a series of measures and modifications to the Bankruptcy Procedures Law. The modifications consist mainly of: • the adapting of current regulations to technological advances, making the procedure more efficient • the modification of the concept of "debtor company" to prevent it from being understood by natural persons who issue fee invoices, coming to be understood within the category of "debtor person" • the incorporation of the concept of a smaller company • the establishment of a higher liability standard when a creditor requests forced liquidation of a company	Yes, there is a bill, initiated by the President of the Republic, that establishes measures to boost productivity and entrepreneurship, and that establishes a series of measures and modifications to the Bankruptcy Procedures Law. The modifications consist mainly of: • the adapting of current regulations to technological advances, making the procedure more efficient • the modification of the concept of "debtor company" to prevent it from being understood by natural persons who issue fee invoices, coming to be understood within the category of "debtor person" • the incorporation of the concept of a smaller company • the establishment of the maximum amount of the vendor's fees in cases where the debtor company is a smaller company. An exception has also been established to the requirement of the reorganization resolution issued by the competent court, regarding the seller's fees when the debtor company is a smaller company. • the ability of the debtor company to submit the information regarding its creditors by means of an affidavit if the debtor company qualifies as a smaller company • the fostering of efficiency in the activity of the organs of the State administration, specifically the Superintendence of Insolvency and Re-entrepreneurship, in its relationship with individuals

UPDATED MAY 5, 2020

CHINA

CHINA	Dissolution proceedings	Bankruptcy proceedings
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Generally, yes.	Yes. However, an administrator has the right to petition the court to nullify the security if such security is given for originally unsecured debts within one year before the court accepts the application for bankruptcy.
What is the nature of the process?	It is a company law process. Dissolution proceedings can be initiated either voluntarily or ordered by the court at the application of shareholders. Under People's Republic of China (PRC) company law, the following reasons could result in the dissolution of a company: (1) the term of business operation prescribed by the articles of association (AOA) expires or any of the situations for dissolution prescribed in the AOA (2) the shareholders' general meeting resolves to dissolve the company (3) it is necessary to be dissolved due to the merger or demerger of the company (4) the business license is canceled or it is ordered to close down according to law (5) where a company meets serious difficulties in its operations or management such that the interests of the shareholders will be severely undermined if the company continues to exist and the difficulties cannot be otherwise solved, the shareholders who hold 10% or more of the voting rights of the company may plead to the court to dissolve the company	It is a bankruptcy law process. If a company cannot pay off its due debts and its assets are not enough to discharge all the debts, or it apparently lacks the ability to pay off the debts, bankruptcy proceedings can be triggered. There are three types of bankruptcy proceedings: Bankruptcy liquidation: Either the creditor or the debtor can submit an application to the court to initiate the bankruptcy liquidation proceedings. In addition, under the dissolution proceedings, if the liquidation group finds that the properties of the company are not adequate to pay off the debts after liquidating the properties of the company and producing balance sheets and checklists of properties, it will file an application to the court to announce the company's bankruptcy. The proceedings commence when the court declares a debtor bankrupt. After the proceedings, the company will eventually cease to exist. Settlement: A debtor may apply for settlement directly with the court or, after the court accepts the application for bankruptcy and before it is declared bankrupt, may apply to the court for settlement. When applying for settlement, the debtor will put forward a draft settlement agreement for approval by the creditors' meeting and affirmation by the court, which, if passed, will have the effect of terminating the bankruptcy proceedings.

CHINA

	Dissolution proceedings	Bankruptcy proceedings
	Further, as per judicial interpretations, the above-mentioned serious difficulties may particularly include corporate deadlock, for example, no shareholder meeting could be held in the past two consecutive years, or no valid shareholder resolution could be passed in the past two consecutive years, or there is a long-term and unresolvable conflict among directors that results in serious difficulty in terms of management.	and allowing the debtor to emerge from the proceedings intact. A debtor will pay off its debts according to the conditions stipulated by the settlement agreement. Where a debtor is unable or fails to implement the settlement agreement, the court will, upon request of the creditor, terminate the implementation of the settlement agreement, announce the debtor bankrupt and initiate the bankruptcy liquidation proceedings. Revival: Either the creditor or the debtor can apply to the court to initiate the revival proceedings, where the debts will be put under moratorium with a view to reviving the company. Under the revival proceedings, the debtor will implement a revival plan worked out either by itself or the administrator. Where a debtor fails or refuses to implement the revival plan, the court may, upon request of the administrator or interested party, terminate the implementation of the revival plan, announce the debtor bankrupt and initiate the bankruptcy liquidation proceedings. The revival proceedings are advantageous to a debtor as they allow the debtor to continue to operate its business and defer repayments of its debts or even have its debts deducted. In such proceedings, the debtor is able to relieve its financial pressure and obtain chances to get out of the distress of being bankrupted.
What is the solvency requirement?	If the dissolution proceedings are triggered due to the above-mentioned (1), (2), (4) and (5) events, a liquidation group will be formed to conduct liquidation. Generally, the company will be solvent under the dissolution proceedings. However, if the liquidation group finds that the company's assets are insufficient to pay off its debts, it will file a bankruptcy application to the courts and the dissolution proceedings would become bankruptcy proceedings.	The solvency requirement for initiating the bankruptcy proceedings is if the debtor fails to pay off its due debts and its assets are not enough to pay off all the debts, or if it is obviously incapable of paying off its debts. When the above-mentioned requirement is satisfied, the revival or bankruptcy liquidation proceedings can be initiated by the court upon application from either the debtor or creditor. However, the settlement proceedings can only be initiated by the court upon application from the debtor.

CHINA

	Dissolution proceedings	Bankruptcy proceedings
Is there a requirement to demonstrate COMI ("centre of main interests")?	No. The liquidation group, appointed by the court or by the company itself in accordance with the applicable laws, should prepare balance sheets and property lists that cover all the assets and property of the company under dissolution proceedings, including overseas assets. However, there is no mandatory requirement to demonstrate COMI. Instead, under PRC laws, the court at the place of the company's domicile has jurisdiction over company dissolution cases. The domicile of a company refers to the location where the principal office of a company is located. Where the principal office is unclear, the court at the place where the company is registered has jurisdiction.	No. The court at the place where the debtor is domiciled has jurisdiction over the bankruptcy case. The domicile of a company refers to the location where the principal office of a company is located. Where the principal office is unclear, the court at the place where the company is registered has jurisdiction. The effects of bankruptcy proceedings can extend to the debtor's assets outside of China.
Is restructuring of both secured and unsecured claims possible?	It is not prohibited by law but it is rather unlikely in reality, unless the creditors find a strong reason to agree to a restructuring.	It is possible subject to creditors' consent.

CHINA

	Dissolution proceedings	Bankruptcy proceedings
Is there a classification of creditors and shareholders?	There is no classification of creditors. The classification of shareholders is outlined in the AOA.	Creditors are classified into different groups based on their claims categories, which are as follows: (1) employee claims (2) social security claims and tax claims (3) unsecured claims Prior to the distribution of the existing assets to the above-mentioned creditors, a creditor of a secured asset is entitled to a priority right to receive repayment guaranteed by their secured asset. In addition, bankruptcy expenses, as well as the following community debts, will be paid at any time during the bankruptcy proceedings: (1) debts generated when the debtor or administrator requests that the counterparty perform a contract that is not fulfilled completely by both parties (2) debts generated from negotiorum gestio (3) debts generated as a result of unjustified enrichment (4) expenses incurred for the continuance of business operations, social insurance premiums, etc. (5) debts generated from damages that occurred during the performance of an administrator's duty (6) debts generated from damages due to the debtor's assets Where the debtor's assets are not sufficient to pay off all the bankruptcy expenses and community debts, the bankruptcy expenses will be paid as a priority. There is no classification of shareholders unless provided in the AOA.
Is there a requirement for voting approvals by shareholders?	No. That said, after the liquidation of the company is completed, the liquidation group will make a liquidation report and submit it to the shareholders' meeting, the shareholders' assembly, the people's court for confirmation and the company registration authority to deregister the company. The liquidation group will also make a public announcement regarding the closure of the company.	There is no requirement for voting approvals by shareholders during bankruptcy proceedings. While in revival proceedings, the representatives of the shareholders may attend the creditors' meeting to discuss a draft revival plan. If a draft revival plan involves the adjustment of the rights and interests of the shareholders, a group of shareholders will be formed to vote on this issue.

CHINA

	Dissolution proceedings	Bankruptcy proceedings
Is there a requirement for voting approvals by shareholders' creditors?	No.	No.
Is there an ability to bind minority dissenting creditors?	N/A No creditor voting is applied under dissolution proceedings.	Yes. Matters that require the creditors' approval are usually passed by a majority (over one-half) or super majority (over two-thirds) of creditors or are subject to a court order. The decisions made through a creditors' vote or a court order can bind minority dissenting creditors.
COMMENCING THE PROCESS		
Who can commence?	A company can commence the process voluntarily. Under certain circumstances, the court can also order the process to be commenced upon an application submitted by qualified shareholders.	Bankruptcy liquidation proceedings or revival proceedings can be initiated by the court upon the application of: 1) a debtor or creditor 2) a liquidation group in voluntary liquidation proceedings 3) a creditor in a bankruptcy settlement where the company fails to duly perform the settlement agreement 4) an administrator/people of interest where the company fails to duly implement the revival plan Settlement proceedings can be initiated and hosted by the court upon the application of a debtor. Revival proceedings can be initiated by the court upon the application of debtors and creditors.

CHINA

	Dissolution proceedings	Bankruptcy proceedings
Is shareholders' consent required to commence proceedings?	Pursuant to PRC company law, for limited liability companies, the decision to dissolve a company requires approval from shareholders who hold two-thirds or more of the voting rights, while for companies limited by shares, the decision to dissolve a company requires approval from shareholders who hold two-thirds or more of the voting rights of the shareholders present in the shareholders' meeting. In addition, if the company meets any serious difficulties in its operations or management and the interests of the shareholders face heavy losses if the company continues to exist, while the difficulties cannot be solved by any other means, shareholders who hold 10% or more of the voting rights may apply to the court to dissolve the company.	When the company initiates the bankruptcy proceedings, the decision requires the approval of the shareholders' meeting. However, there is no mandatory ratio for voting approval by the shareholders. Therefore, the decision to file a bankruptcy application should be made in accordance with the AOA of the company. In practice, an application for bankruptcy is a material matter for the company; it may require approval from shareholders who hold two-thirds or more of the voting rights. On the other hand, where the bankruptcy proceedings are initiated by the creditors and approved by the court, there is no need to obtain shareholder approval.
Is there an ability to consolidate group estates?	No.	No.
Is there any court involvement?	For voluntary dissolution, court involvement is not required to commence the process. For involuntary court-ordered dissolution, the process is commenced by an order of the court. In both voluntary and involuntary dissolutions, court involvement can be sought if a liquidation group is not formed within the time limit specified, or in case of intentionally deferred liquidation, or where there are other illegal liquidation acts.	The court reviews the application for bankruptcy and decides whether to accept the application. If the court decides to accept the application for bankruptcy, it appoints an administrator. Each stage of the bankruptcy proceedings is under the supervision of the court.
Who manages the debtor?	The liquidation group formed by the company itself or designated by the court.	The administrator designated by the court. That said, in revival proceedings, the company can manage its assets and business operations on its own under the supervision of the administrator and it can work out a revival plan itself.
What is the level of disclosure of the process to voting creditors?	Creditors have no voting rights in dissolution proceedings. However, the liquidation group will notify the creditors within 10 days of its formation.	Creditors will be notified of the commencement of the bankruptcy proceedings. All claims against the debtor, any revival plan, settlement agreement and distribution arrangement require significant disclosures to creditors for voting at the creditors' meeting.

CHINA

	Dissolution proceedings	Bankruptcy proceedings
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Dissolution proceedings under PRC company law apply to limited liability companies and companies limited by shares (including listed companies) that are established within China in accordance with PRC company law. The dissolution of other entities is governed by other legislation. For example, a partnership enterprise is dissolved according to the PRC Partnership Enterprise Law.	The PRC Enterprise Bankruptcy Law applies to enterprise legal persons, including limited liability companies and companies limited by shares. For other organizations that are not enterprise legal persons, such as a partnership enterprise, their bankruptcy liquidation is governed *mutatis mutandis* by the procedure as prescribed by the PRC Enterprise Bankruptcy Law.
How long does it generally take for a creditor to commence the procedure?	N/A	Where a creditor makes an application for bankruptcy, within five days from the date it receives the application, the court will notify the debtor concerned. If the debtor has objections to the application, it will put forward its objections to the court within seven days from the date it receives the notification from the court. The court will decide whether to accept the bankruptcy application within 10 days at the expiration of the period for raising objections. Except for the circumstances specified in the preceding paragraph, the court will decide whether to accept an application for bankruptcy within 15 days from the date it receives the application. In practice, however, PRC courts usually take a long time (months or years) to take bankruptcy applications.
EFFECT OF PROCESS		
Does the debtor remain in possession with continuation of incumbent management control?	The company will be under the control of the liquidation group, which usually consists of the incumbent management.	Generally, the company will be under the control of the administrator. However, during the revival proceedings, the debtor may, through its application and upon approval by the court, manage its assets and business operations on its own under the supervision of the administrator.

CHINA

	Dissolution proceedings	Bankruptcy proceedings
What is the stay/moratorium regime (if any)?	During the declaration period when the creditors declare their rights to the liquidation group, the liquidation group will not settle any creditor rights.	Upon the acceptance of a bankruptcy application by the court, an automatic stay will be triggered in the following respects: • Payment of debts made by the debtor to some of the creditors will be invalid. • Any preservation measures of the debtor's assets will be discontinued and enforcement of the debtor's assets will be suspended. • All commenced and pending litigation or arbitration proceedings involving the debtor will be suspended. Such proceedings will continue after the administrator has taken over the debtor's assets.
Is there a provision for debtor-in-possession super priority financing?	No.	No.
Can the procedure be used to implement a debt-to-equity swap?	No.	Yes. During the revival or settlement proceedings, creditor rights can be converted into equity.
Are third-party releases available?	No.	This is not applicable under bankruptcy liquidation proceedings. While in bankruptcy settlement and revival processes, third-party release may be available upon the consent of creditors.
Are the proceedings recognized abroad?	This would depend on where the recognition is sought.	This depends on the regimes abroad.
Has the UNCITRAL Model Law been adopted?	No.	No.

CHINA

	Dissolution proceedings	Bankruptcy proceedings
How long, complex and expensive is the process?	The time frame varies from six months to one year, or even longer. Factors relating to the company's history, for example, or tax or customs records might arise, prolonging this process. For example, if a company was previously penalized for tax and/or customs violations or, during the liquidation audit, the tax authority identified improper accounting arrangements, stricter scrutiny would be imposed and this would cause significant delays to the process.	Generally, the process may take from six months to two years. However, various factors may cause serious delays. Based on our past experience, bankruptcy proceedings can last for more than five years.
Is there a mandatory set-off of mutual debts on insolvency?	N/A	It is not mandatory. Where the creditor owes a debt to the debtor prior to the acceptance of the bankruptcy application, the creditor may claim to the administrator to set off the debt. However, there will be no offset in any of the following circumstances: (1) where the party owing a debt to the debtor assigns creditor rights against the debtor from a third party after the acceptance of the bankruptcy application (2) where a creditor is aware that the debtor is insolvent or there is a bankruptcy application regarding the debtor but it still chooses to be indebted to the debtor, except where the debt was created in accordance with law or under circumstances that occurred one year before the bankruptcy application (3) where a debtor of the insolvent company obtains creditor rights against the company while aware that the company is insolvent or is aware of the bankruptcy application, except where the creditor rights were created by operation of law or under circumstances that occurred one year before the bankruptcy application
Can a debtor continue to carry on business during insolvency proceedings?	A debtor continues to exist but cannot carry on any new business unconnected to the liquidation.	The creditors' meeting can decide whether the debtor can continue or must discontinue its business operations. Before the first creditors' meeting is held, the administrator, subject to approval by the court, can make the decision.

CHINA

	Dissolution proceedings	Bankruptcy proceedings
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	N/A That said, there are detailed provisions under PRC company law. However, PRC company law makes clear that any member of a liquidation group who causes loss to the company or to any of its creditors, either intentionally or due to their gross negligence, is liable to compensate the affected party.	N/A That said, where the debtor trades at zero price or an obviously unreasonably low price, or provides property security to unsecured debts, pays off undue debts or abdicates debts owed to it within one year before the court accepts the application for bankruptcy, an administrator will have the right to request that the court nullify such acts. In addition, if a debtor commits such acts, harming the interests of its creditors, the legal representative of the debtor and the person who is directly responsible will bear liability for compensation.
What is the order of priority of claims?	Claims shall be paid off in the following order: (1) liquidation expenses; (2) wages of employees; (3) social insurance premiums and legal indemnities; (4) outstanding taxes; and (5) the debts of the company. After paying off the above claims, the remaining properties of the company will be distributed among the shareholders. If any claims cannot be fully discharged, it shall turn into a bankruptcy proceeding.	The insolvent company's assets, after having discharged all the security interests created over them, will be applied to settle the claims in the following sequence: (6) bankruptcy expenses and collective debts using the company's assets (7) wages, medical subsidies, disability subsidies and compensation owed to employees by the company and any other compensation required to be paid to employees pursuant to laws and administrative regulations (8) social security expenses other than those mentioned in the preceding item as owed by the company to social security funds and unpaid taxes of the company (9) normal unsecured creditor claims
Are there any pension liabilities?	No.	No.

CHINA

	Dissolution proceedings	Bankruptcy proceedings
Is it possible to challenge prior transactions?	Yes, contract law rules and principles apply. For example, under the PRC Contract Law, a contract will be null and void under any of the following circumstances: (1) the contract is executed by fraud or coercion of one party to damage the interests of the state (2) the contract is executed based on malicious collusion to damage the interests of the state, a collective or a third party (3) the contract is used to conceal an illegitimate purpose under the guise of a legitimate form (4) the contract damages public interests (5) the contract violates the compulsory provisions of laws and administrative regulations	(1) Besides grounds under contract law, the administrator has the right to apply to the court to invalidate the following acts if the act involving the debtor's assets was committed within one year before the court accepted the bankruptcy application: (a) uncompensated transfers of assets (b) transactions executed at clearly unreasonable prices (c) charge of assets as collateral for non-secured debts (d) prepayment of debts that are not due (e) any waiver of creditor rights (2) If the debtor is unable to repay its due debts and its assets are insufficient for the settlement of all debts, or where it is clearly insolvent but still makes a debt payment to any individual creditor during the six months before the court accepted the bankruptcy application, the administrator has the right to apply to the court to declare the act invalid, unless any such debt settlement is for the benefit of the debtor's assets. .
COVID-19		
Is state support for distressed businesses available?	No.	Yes, due to the outbreak of coronavirus, Chinese government authorities have promulgated several policies to support Chinese enterprises in tackling this crisis. Such support mainly concerns offering better financing policies, strengthening monetary and credit support, deferring payment for taxations and social securities, etc. For example, the People's Bank of China, the Ministry of Finance, the China Banking and Insurance Regulatory Commission and some other departments issued the Notice of Further Strengthening Financial Support for the Prevention and Control of the Epidemic of Novel Coronavirus Pneumonia, which introduced several measures to support Chinese enterprises, including increasing credit support in fields related to epidemic prevention and control, granting extensions or renewals of loans to enterprises that are severely affected by the epidemic and are struggling to make payments, lowering lending rates and increasing fiduciary loans and medium- and long-term loans to relevant enterprises, etc.

CHINA

	Dissolution proceedings	Bankruptcy proceedings
		Apart from financial and credit support, the Ministry of Industry and Information Technology issued policies to promote deferred payments on electricity, water and gas necessary for the production and operation of small and medium enterprises during the epidemic period, and to implement the measure of "non-stop supply" during the deferred period.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	No.	No.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	Yes. In June 2019, the National Development and Reform Commission, the Supreme People's Court, the Ministry of Industry and Information Technology and several other departments jointly issued the Reform Plan for Accelerating Improvement of the Exit System for Market Participants ("**Reform Plan**"), which generally requires further clarification of the methods for the exit of market participants and the improvement of conditions, standards and specific procedures for a well-regulated exit. In addition, the Reform Plan particularly requires different government departments to undertake corresponding responsibilities to improve the dissolution proceedings, as well as the bankruptcy proceedings. The topics mentioned in the Reform Plan are still under discussion. In terms of the improvement of dissolution proceedings, the Reform Plan not only requires the regulation of exit by voluntary dissolution, but also states that exit by involuntary dissolution should be implemented steadily and properly. In terms of voluntary dissolution, the Reform Plan emphasizes that enterprises should stipulate the causes of dissolution in their AOA. Unless otherwise provided by law, upon the occurrence of a cause of dissolution, the market participant will pass a resolution to dissolve according to the governance procedure and voluntarily leave the market.	The Reform Plan seeks to improve the bankruptcy regime for enterprises. Several requirements are set out in the Reform Plan, including but not limited to: (1) improving the institution and trial procedures for enterprise bankruptcy, specifically: a) researching and studying the necessity and feasibility of imposing on senior management and other relevant responsible persons of enterprises the obligation to apply for bankruptcy liquidation or revival proceedings in a timely manner when the enterprises experience financial difficulty b) improving the rules of rankings of debts in bankruptcy proceedings c) establishing a summary procedure for bankruptcy trials d) improving the rules of cross-border bankruptcy and the bankruptcy of affiliate enterprises, etc. (2) studying the establishment of a pre-revival and extrajudicial revival regime, specifically a) improving the system of financial institution creditors' committees and specifying the mechanism for procedure shifts and recognition of the effect of resolutions between the system of financial institution creditors' committees and the system of judicial creditors' committees

CHINA

Dissolution proceedings

As for involuntary dissolution, the Reform Plan requires the following:

(1) Strictly define the conditions for market participants to exit by involuntary dissolution arising from the provisions of the government's public policies, steadily and properly handle related post-exit matters and protect the property of market participants.

(2) Harmonize standards and procedures for the exit of market participants by involuntary dissolution.

(3) Establish a remedy procedure for exit by involuntary dissolution to guarantee the lawful rights and interests of exiting market participants and stakeholders.

(4) Improve the mechanism for the connection between liquidation in dissolution and liquidation in bankruptcy proceedings of companies.

Bankruptcy proceedings

b) studying the establishment of a pre-revival system and specifying the legal status and contents of a pre-revival system

c) enhancing the credibility and binding force of an extrajudicial revival system

d) achieving an effective connection between the extrajudicial revival system, the pre-revival system and the bankruptcy revival system

(3) improving the bankruptcy revival regime, specifically:

a) refining and improving the implementation rules for the revival proceedings

b) specifying the examination standards and the legal basis for the compulsory approval of revival plans and regulating courts' power to exercise the compulsory approval of revival plans

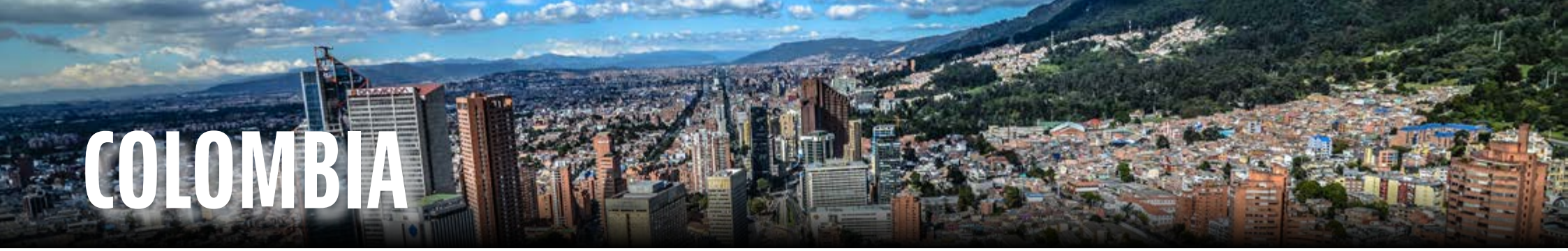
c) improving the group voting mechanism in the revival proceedings

d) optimizing the administrator system and management models, specifying the boundaries of rights between administrators and debtors, and administrators and creditors

e) reasonably involve debtors to operate business in the revival proceedings

f) establishing a mechanism to recruit personnel with professional qualifications and the capability to participate in the operation and management of enterprises under revival proceedings

UPDATED MAY 5, 2020



COLOMBIA

COLOMBIA	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
INITIAL CONSIDERATIONS			
Can you take security over all types of assets, including working capital?	In general, yes. Non-bankruptcy law regulates the creation of securities. In the context of a reorganization process, you cannot take new securities nor cancel or enforce the securities granted by the debtor before the reorganization proceedings, unless otherwise provided in the reorganization agreement or authorized by the bankruptcy court (art. 17, L. 1116/06).	In the context of a liquidation process, it is generally difficult for the debtor to constitute securities because the sole purpose of a liquidation impedes the company the development of its corporate purpose. Theoretically, it is possible only if the security is necessary for the immediate liquidation of the debtor. Otherwise the act of granting such a security shall be deemed ineffective (art. 48 L. 1116/06).	Once a request for admission into an emergency negotiation of debts or expedited recovery proceedings is filed, you cannot take, cancel or enforce securities unless otherwise provided in the reorganization agreement or authorized by the bankruptcy court (art. 17, L. 1116/06).
What is the nature of the process?	A court process leading to the reorganization of the debtor's assets and liabilities in order to avoid its liquidation	A court process leading to the sale of the debtor's assets, payment of its debts, and ultimate dissolution of the debtor.	There are three alternatives: 1. expedited proceedings before the bankruptcy court 2. emergency negotiation of debts: an out-of-court scenario for negotiation of debts with creditors 3. expedited recovery proceedings conducted by a mediator before the Colombian Chambers of Commerce

COLOMBIA

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
What is the solvency requirement?	The debtor must be either in default of two or more obligations with two or more creditors for more than 90 days or being sued as defendant in two or more collection actions. In both cases, the obligations shall amount to no less than 10% of the debtor's absolute liabilities. Also, if the debtor faces foreseeable and imminent bankruptcy (incapacidad de pago inminente), either due to harsh market conditions or internal constraints that impede normal functioning of the company, it can file for reorganization (art. 9, L. 1116/06).	There is no solvency requirement.	The same requirements as for the reorganization process.
Is there a requirement to demonstrate COMI ("centre of main interests")?	No. Debtors who carry out permanent businesses in Colombian territory are eligible to file for reorganization. Local branches of foreign entities are also eligible (art. 2, L. 1116/06). Overseas insolvencies: Local ancillary proceedings can be commenced for assets located in Colombia because of the prior commencement of main proceedings in a foreign jurisdiction. "Main foreign proceedings" are defined as the proceedings carried out in the jurisdiction where the debtor has its COMI (art. 87, L. 1116/06).	No. Debtors who carry out permanent businesses in Colombian territory are eligible to file for liquidation. Local branches of foreign entities are also eligible (art. 2, L. 1116/06). Overseas insolvencies: Local ancillary proceedings can be commenced for assets located in Colombia because of the prior commencement of main proceedings in a foreign jurisdiction. "Main foreign proceedings" are defined as the proceedings carried out in the jurisdiction where the debtor has its COMI (art. 87, L. 1116/06).	The rules of the reorganization process provided in Law 1116/06 apply.
Is restructuring of both secured and unsecured claims possible?	Yes. Reorganization proceedings are flexible, allowing the restructuring of both secured and unsecured claims. Assets that are not necessary for the economic activity of the debtor may be excluded from the reorganization if subject to a security interest.	No. The liquidation of a company is a process that does not allow for the restructuring of secured and unsecured claims.	Yes. Reorganization proceedings are flexible, allowing the restructuring of both secured and unsecured claims.

COLOMBIA

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
Is there a classification of creditors and shareholders?	Yes. There are various classifications of creditors. Categories of creditors to obtain majorities: Insolvency law provides that there are five categories of creditors: (1) labor credits, (2) public and social security institutions, (3) financial institutions, (4) internal creditors (shareholders), (5) all the other external creditors. As a general rule, to obtain approval of the reorganization agreement, the debtor must obtain the absolute majority of voting rights (more than 50%) of at least three of the five categories. Classification of creditors for statutory payment order: See "What is the order of priority of claims?"		Yes. The same categories of creditors of the general bankruptcy rules for a reorganization. However, under an emergency negotiation of debts, the debtor may negotiate and reach an agreement with only one or with various categories of creditors (art. 8, para. 3, Decree 560/20).
Is there a requirement for voting approvals by shareholders?	No. Approval of a reorganization agreement requires absolute majority of admitted votes coming from at least three different categories of creditors established in article 31 of Law 1116.	No. Majority rules applicable to the approval of a reorganization agreement apply to an adjudication/ assignment agreement.	No, unless there is a debt-to-equity swap.
Is there a requirement for voting approvals by shareholders' creditors?	No.	No.	No.
Is there an ability to bind minority dissenting creditors?	Yes. A reorganization agreement approved by absolute majority of voting rights is also binding for minority dissenting creditors.	Yes. An adjudication/assignment agreement approved by absolute majority of voting rights is also binding for minority dissenting creditors.	In an emergency negotiation of debts, the reorganization plan shall be binding exclusively to those creditors pertaining to the categories of creditors subject to negotiation.

COLOMBIA

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
COMMENCING THE PROCESS			
Who can commence?	(1) The debtor, the Superintendence of Companies in charge of supervising the debtor, or any creditor whose credit has been unfulfilled, when the debtor is in default of two or more obligations with two or more creditors for more than 90 days or been sued as defendant in two or more collection actions. (2) The debtor or a number of external non-debtor related creditors, when the debtor faces foreseeable and imminent bankruptcy. (3) A foreign representative of a foreign insolvency proceeding	• the debtor • the authority in charge of supervising the debtor the Superintendence of Companies • jointly, the debtor and a number of external non-debtor related creditors representing at least 50% of debtor's external liabilities • a foreign representative of a foreign insolvency proceeding	• the debtor in the case of an emergency negotiation of debts • in the case of expedited recovery proceedings, all the subjects entitled to commence a reorganization according to Law 1116/2006
Is shareholders' consent required to commence proceedings?	No. However, filing directly by the debtor may be subject to standard bylaws' requirements on board or shareholder majority.	No.	No. However, filing directly by the debtor may be subject to standard bylaws' requirements on board or shareholder majority.
Is there an ability to consolidate group estates?	No. There are special rules applicable to reorganization of business groups to ensure coordination between the proceedings commenced against each member of the group.	Yes, and only where there is a business group. Business groups for bankruptcy purposes are defined as an integrated set of individuals, companies, trusts, or entities of any other nature that are involved in economic activities, linked or related to each other by the fact of being controlled or subordinated, or because most of their capital is owned or under the administration of the same individual or legal entity.	The rules of the reorganization process provided in Law 1116/06 apply.

COLOMBIA

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
Is there any court involvement?	Yes. The court verifies objective thresholds or decides on insolvency relief on the grounds of imminent insolvency. During all stages of insolvency proceedings, the court is empowered to resolve disputes between the bankruptcy manager and creditors regarding issues arising within a bankruptcy case (e.g., clawback actions, complaints on actions/inaction of the bankruptcy manager, objections to the project of classification of claims and interests, approval of a selling order, etc.). After initiation of the proceedings, the court takes a supervising function. The court's approval is required for certain actions, including the disposal of certain assets and the ratification of the reorganization agreement approved by the majority of creditors.	Yes. The court verifies objective thresholds or grounds for admission and decides on the other grounds for liquidation.	Yes, to confirm the reorganization plan reached between creditors and the debtor.
Who manages the debtor?	The debtor's management retains its powers, subject to the limitations imposed by law and by the bankruptcy court. The court appoints a promoter (promotor) who will be entrusted with the duty of helping the insolvent company reach an agreement with its creditors to restructure its debts.	An appointed insolvency liquidator (agente liquidador).	The debtor's management retains its powers.

COLOMBIA

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
What is the level of disclosure of the process to voting creditors?	High level. Once the debtor is admitted to reorganization, the Superintendence of Companies publishes on its web page the financial information attached by the debtor to its filing for admission, specifically the inventory of assets and the project of classification of claims and interests. The Superintendence of Companies summons all creditors to submit any objections to this financial information. Creditors may follow-up on the status of the proceedings in the web page of the Superintendence of Companies or the Superintendence of Companies' offices. During the negotiation and performance of the reorganization plan, the debtor must make available to its creditors quarterly reports on its financial situation, including its financial statements.	High level. Once the company is admitted to liquidation, the Superintendence of Companies publishes on its web page and on the web page of the debtor, a notice of the commencement of the process for 10 days. Following those 10 days, all the creditors have 20 days to submit their credit to the insolvency liquidator. Based on the credits submitted, the insolvency liquidator will elaborate and deliver to the Superintendence of Companies the project of classification of claims and interests for its ratification. This project will contain the voting rights of each creditor in the negotiation of a potential agreement over the adjudication/ assignment of the debtor's available assets.	High level. General insolvency rules on the publication of the debtor's financial information, creditors' claims and interests and voting rights shall apply by default.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	The insolvency regime provided in Law 1116 of 2006 applies to all types of debtors, except for those entities listed in article 3, which will be subject to specific rules. Those entities are: • specific health institutions • financial institutions • stock market entities • utilities • territorial entities and decentralized entities		Institutions of article 3 of Law 1116 may apply for expedited recovery proceedings.
How long does it generally take for a creditor to commence the procedure?	Depends on various factors, such as, the amount of the debt, the previous negotiations conducted with the debtor, the nature of the relationship with the debtor.	N/A	N/A

COLOMBIA

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
EFFECT OF PROCESS			
Does the debtor remain in possession with continuation of incumbent management control?	Commonly, the debtor remains in possession with continuation of incumbent management, unless agreed otherwise in the reorganization agreement	No. The Superintendence of Companies appoints an insolvency liquidator (agente liquidador) that will be entrusted with the administration and management of the debtor, and that will take the protective actions deemed necessary to prevent the deterioration or destruction of any of the assets, and the assignment of them according the agreement reached with creditors or to the legal rules provided in Law 1116.	The debtor remains in possession with continuation of incumbent management.
What is the stay/moratorium regime (if any)?	Creditors will not be entitled to carry out collection proceedings against the debtor to collect the debts that were incurred prior to the admission of the debtor into the reorganization proceeding. In addition, with the filing for reorganization, and unless otherwise authorized by the Superintendence of Companies, the debtor is precluded from: making any amendments to its bylaws; form granting or enforcing any collateral over its own assets including trusts, from making offsets, payments, waivers or settlements of its debts; and any act of disposal of title over assets of its estate other than those acts of the ordinary course of business of the company. It is forbidden for creditors to declare the unilateral termination of contracts due to the filing for or admission to reorganization of the debtor.	All the collection proceedings commenced against the debtor shall be referred to the bankruptcy court for their inclusion as credits in the project of classification of claims and interests, and are subject to the adjudication/assignment plan reached between the debtor and its creditors and to the statutory payment order.	In an emergency negotiation: general insolvency rules on moratorium apply for emergency negotiation and to expedite recovery, with some exceptions: (1) The bankruptcy court has no powers to lift precautionary measures enforced against the debtor under existing individual collection proceedings filed by creditors. (2) The bankruptcy court has no powers to issue any type of instruction regarding any trust constituted by the debtor as security. (3) The bankruptcy court has no powers to prevent any unilateral termination of contracts by creditors. (4) The debtor, at its sole discretion, may postpone payment of any administrative expense from the date of commencement of the negotiation, without being in default of such obligation. In expedited recovery proceedings: general insolvency rules apply, except those related precautionary measures.

COLOMBIA

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
Is there a provision for debtor-in-possession super priority financing?	There are mechanisms to have super priority when financing a debtor in reorganization. The best way to achieve such super-priority would be by court approval or as part of the reorganization plan. Super-priority is unlikely to trump labor and tax claims.	No.	Includes new mechanisms for financing with super priority.
Can the procedure be used to implement a debt-to-equity swap?	Yes, depending on the terms of the agreed reorganization plan. This may also require shareholders consent. The debt-to-equity swap requires the individual consent of the respective creditor.	N/A	Yes, depending on the terms of the agreed reorganization plan. This may also require shareholders consent. The debt-to-equity swap requires the individual consent of the respective creditor.
Are third-party releases available?	Colombian law does not embody the concept of 'third-party releases.' Under article 70 of Law 1116, if at the time of initiation of the reorganization proceeding, a creditor has collectively sued the debtor and third parties (guarantors, sureties, insurance companies, etc.) in a collection proceeding, such creditor can withdraw the suit against those third parties and opt to pursue its credit within the reorganization proceeding. In such a case, enforced precautionary measures over the assets of the third parties will be released.	N/A	The rules of the reorganization process provided in Law 1116/06 apply.
Are the proceedings recognized abroad?	It depends on the specific rules of each jurisdiction where the Colombian proceedings are seeking to be recognized. Countries who have adopted the UNCITRAL Model Law on Insolvency are more likely to recognize Colombian insolvency proceedings.		N/A, since they are not judicial proceedings.
Has the UNCITRAL Model Law been adopted?	Yes.	Yes.	N/A
How long, complex and expensive is the process?	It depends on the size of the company and the number creditors and the nature of the relationships between the debtor and its creditor. The process can take months or years, and costs and complexity vary.		Emergency negotiation of debts and expedited recovery proceedings shall take a maximum of three months.

COLOMBIA	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
Is there a mandatory set-off of mutual debts on insolvency?	No. In fact, mutual debt set-off is forbidden from the date of filing for admission to reorganization (art. 17, L. 1116/06).	No.	No. Article 17 of Law 1116 applies.
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	No.	Yes.
OTHER FACTORS			
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Directors or administrators of the insolvent company may be jointly and severally liable for any loss caused to other creditors due to a breach of trading restrictions enshrined in article 17 of Law 1116 (e.g., granting of new securities, payments made to satisfy certain creditors and other acts of disposal of title made after the date of filing for reorganization in aggravation of the financial situation of the debtor or at the cost of creditors' interests). If the estate of the debtor is diminished or deteriorated due to willful misconduct or fault of its administrators, shareholders, statutory auditors or employees, they will be civilly liable for payment of the debtor's unpaid external liabilities. There are also corporate regulations that require directors to inform the shareholders when certain possible causes for the dissolution of the company occur (e.g., reduction of net equity below 50% of the issued share capital). Failure to inform such dissolution grounds may make directors liable for any loss caused on shareholders or third parties (e.g., creditors) for operations concluded after the date of such dissolution grounds.	From the date of admission into liquidation, the debtor, its administrators, directors or controlling entities shall not dispose of any of the debtor's assets at the risk of being imposed economic sanctions by the Superintendence of Companies (art. 50.11, L. 1116/06). If the estate of the debtor is diminished or deteriorated due to willful misconduct or fault of its administrators, shareholders, statutory auditors or employees, they will be civilly liable for payment of the debtor's unpaid external liabilities.	The rules of the reorganization process provided in Law 1116/06 apply.

COLOMBIA

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
What is the order of priority of claims?	The statutory payment order is the following: (i) post-admission debts (i.e., administrative expenses), labor and tax debts, (ii) debts secured with a pledge, (iii) debts secured with a mortgage, (iv) debts with strategic suppliers, and (v) other debts. Under articles 50, 51 and 52 of Law 1676 of 2013, creditors who constituted guarantees (i.e., security interests) over the debtor's moveable assets can enforce the guarantees to obtain payment of their credits, even if the debtor is admitted into reorganization, if assets are not necessary for the development of the economic activity of the debtor. If the debtor enters into liquidation proceedings, and the guarantees over the debtor's assets are registered, the guaranteed goods can be excluded from the group of liquidated assets in order to pay the debt, as long as there are no outstanding pension claims.		
Are there any pension liabilities?	Yes. The insolvent debtor must comply with its pension liabilities during the entire reorganization process and the performance of the reorganization plan at the risk of going into liquidation if it does not.	Yes.	Yes. The insolvent debtor must comply with its pension liabilities during the entire negotiation or expedite recovery.
Is it possible to challenge prior transactions?	Yes. Clawback actions may proceed in case it is proved: (i) that any payment was made with the purpose of affecting a debtor's creditor(s) or altering the statutory payment order, (ii) that the remaining assets of the debtor are not enough to cover the debtor's liabilities, and (iii) that the debtor's counterparty to the transaction being clawed-back did not act in good faith when receiving such payment. Gratuitous agreements (e.g., a gift) and amendment to bylaws of the debtor may also be subject to clawback actions. The look-back period is between six and 18 months, depending on the type of transaction.	N/A	The rules of the reorganization process provided in Law 1116/06 apply.

COLOMBIA

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
COVID-19			
Is state support for distressed businesses available?	Yes. Decree 468 of 2020, issued by the Ministry of Finance and Public Credit, established the ability of Financial Institution for Development S.A. (Findeter) and of the Bank of Foreign Trade S.A. (Bancoldex) to grant direct loans with a lower interest rate to eligible economic sectors. Under Decree 560 of 2020, there are some tax reliefs regarding income taxes for companies under reorganization.		
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	Yes. (1) There is a short moratorium for payment obligations of reorganization agreements underway, covering April, May and June 2020. Those obligations shall be deemed outstanding from July 2020. (2) Under Decree 560 of 15 April 2020, once a request for admission into reorganization is submitted, the debtor may be authorized by the bankruptcy court to prepay external labor and suppliers' liabilities not exceeding 5% of its absolute external liabilities, for which purpose, the debtor may, without prior authorization, dispose of any non-operational fixed asset whose amount does not exceed the overall value of the prepayment. (3) A debtor-in-possession is authorized to apply for loans aiming at preserving the business, without prior authorization of the bankruptcy court. (4) A debtor-in-possession is authorized to constitute loan-related securities over estate assets even if other creditors had already been secured with those assets. This shall be authorized by the bankruptcy court and shall not diminish or affect pre-existing secured creditors.		N/A
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	On 15 April 2020, new insolvency rules were enacted to mitigate the economic effects of COVID-19 (Decree 560/ 2020)		

UPDATED MAY 5, 2020

CZECH REPUBLIC

CZECH REPUBLIC

Insolvency proceedings

INITIAL CONSIDERATIONS

Can you take security over all types of assets, including working capital?

Czech law allows security to be taken over any kind of property. This includes physical objects as well as rights, claims or receivables. However, certain requirements need to be met for a security interest to be created effectively. One of those requirements says that the assets to be taken as security need to be specified in order to be identifiable. Since a major part of working capital is cash and short-term receivables, it can be taken as security by pledging bank accounts and short-term receivables as long as these can be sufficiently specified.

What is the nature of the process?

Insolvency proceedings aim to limit the losses of the creditors in the event of an insolvency. Insolvency proceedings in the Czech Republic are always judicial proceedings led by a competent court ("**Insolvency Court**"), which makes decisions and oversees the entire procedure. The subjects participating in the proceedings include the debtor, creditors claiming their receivables, bodies representing the creditors (a creditors' meeting and creditors' committee, which is obligatory if the number of registered creditors reaches or exceeds 50), an Insolvency Court and an insolvency administrator.

The insolvency proceedings commence upon the filing of an insolvency petition by a legitimate person. Afterwards, the Insolvency Court decides whether the debtor is actually insolvent and, if so, which type of insolvency proceedings will be conducted. The Insolvency Court always appoints an insolvency administrator. The insolvency administrator is a person possessing the relevant professional expertise and qualifications who has passed a specialist examination and is listed by the Ministry of Justice.

Upon the declaration of the debtor's insolvency by the Insolvency Court, the insolvency is dealt with under one of the following types of insolvency proceedings:

- **Bankruptcy** (konkurs), where the debtor's assets are sold and after priority claims, including the costs of the proceedings, have been paid, the creditors' claims are proportionally satisfied using the proceeds of the sale. Unsatisfied claims do not cease to exist, unless stipulated otherwise by the Insolvency Code. Bankruptcy always leads to a liquidation of a debtor that is a legal entity.
- **Reorganization** (reorganizace), where the debtor's business is preserved and operated pursuant to an approved reorganization plan under the supervision of the creditors. The creditors' receivables are paid off gradually. Reorganization is only available for entrepreneurs.
- **Debt clearance** (oddlužení), where all due obligations of the debtor are extinguished subject to the conditions stipulated by the Insolvency Court conducting the proceedings. Debt clearance is only available for debtors who are not entrepreneurs, especially natural persons; therefore, the specifics of debt clearance will not be taken into account below.

Please note that the information below focuses on entrepreneurs.

CZECH REPUBLIC

Insolvency proceedings

What is the solvency requirement?	A debtor if it is either **illiquid** or over-indebted. A debtor is illiquid if it is unable to pay its debts as they fall due and: • has more than one creditor • has due and payable monetary obligations that have been overdue for more than 30 calendar days • is unable to satisfy such obligations (i.e., the debtor has suspended payments of a substantial portion of its monetary obligations, has defaulted with respect to payment of the same for more than three months past the due date, or is unable to satisfy certain due and payable obligations of the company by means of judicial enforcement) A debtor is **over-indebted** if: • It has more than one creditor. • The sum of its obligations exceeds the value of its assets. When determining the value of the debtor's assets, a further management of the assets or a further operation of the debtor's business should be taken into consideration, provided that there is a justified presumption that, in light of the circumstances of the case, the debtor would be able to continue to manage its assets or operate its business ("going-concern assumption"). Czech law further defines an **impeding insolvency** as a state when, taking into account all the circumstances of the case, it is reasonable to assume that the debtor would not be able to satisfy a substantial portion of its monetary obligations in a due and timely manner.
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes. The Czech Republic is a Member State of the European Union, and, accordingly, the EU Insolvency Regulation applies. This means that Czech courts only have jurisdiction in insolvency proceedings of debtors whose COMI is located in the Czech Republic.
Is restructuring of both secured and unsecured claims possible?	Yes, both secured and unsecured claims may be affected by a restructuring (reorganization) plan (e.g., partially written down or postponed as a result of a reorganization plan). Generally, the reorganization plan has to be approved by the majority of creditors (who are divided into groups) or, if it is deemed equitable, by the Insolvency Court.
Is there a classification of creditors and shareholders?	Yes. First, there is a difference between secured and unsecured creditors of the debtor. Second, the law gives priority to some types of claims (please see below in the "Other factors" section). A **secured creditor** is a creditor whose claim is secured by assets belonging to the estate in the form of a lien, right of retention, conveyancing restriction, fiduciary transfer of a right, assignment of a claim to the collateral or similar right under foreign law. Secured creditors' claims are satisfied from the full amount of the proceeds from monetization, less the insolvency administrator's fee and the costs of management and monetization, at any time during the proceedings, taking account of the time of inception of the security. However, the security may be challenged under certain circumstances. All other creditors are **unsecured**. Their status in the insolvency proceedings is weaker and the projected level at which their claims will be satisfied, according to statistical data, is usually much lower.

CZECH REPUBLIC

Insolvency proceedings

Is there a requirement for voting approvals by shareholders?	No, the commencement of insolvency proceedings does not require shareholders' approval if the filling of an insolvency petition is mandatory. Under the Business Corporations Act, in the case of impeding insolvency the board (executives) has an obligation to convene the general (shareholders') meeting without undue delay and shall propose that the general meeting takes appropriate action (e.g., restructuring, dismissing employees, selling a plant, receiving shareholders' surcharge outside the registered capital or dissolving the company). Therefore, if filling is voluntary (i.e., in the case of impending insolvency), shareholders' consent may be required.
Is there a requirement for voting approvals by shareholders creditors?	Generally, the claims of shareholders as creditors (e.g., shareholder loans) are treated equally to the claims of all other creditors, subject to and in accordance with the statutory classification of creditors. This means that shareholder creditors have the same voting rights as the other creditors in the same class. However, in certain cases some limitations may apply, such as that the shareholders' creditors belonging to the same group as the debtor cannot vote or their voting rights are restricted.
Is there an ability to bind minority dissenting creditors?	Minority creditors may be bound by decisions taken by the relevant majority of creditors or by the Insolvency Court. Sometimes, the creditors are divided into groups (for instance, in a reorganization) and the calculation of majority may be governed by different rules.

COMMENCING THE PROCESS

Who can commence?	The insolvency proceedings are commenced on the basis of an insolvency petition. In general, the insolvency petition can be filed with the respective court by the **debtor** or any of its **creditors**. In the case of impending insolvency, the insolvency petition is voluntary and can only be filed by the debtor. If the debtor is a legal entity or an entrepreneur, it is obliged to file an insolvency petition without undue delay after it has actually learned that it is insolvent, or after it should have learned of its insolvency if it had exercised due care. This obligation also applies to the members of its statutory body and other potential representatives of the debtor.
Is shareholder's consent required to commence proceeding?	No, the commencement of insolvency proceedings does not require shareholders' approval if the filling of an insolvency petition is mandatory. Under the Business Corporations Act, in the case of impeding insolvency the board (executives) has an obligation to convene the general (shareholders') meeting without undue delay and shall propose that the general meeting takes appropriate action (e.g., restructuring, dismissing employees, selling a plant, receiving shareholders' surcharge outside the registered capital or dissolving the company). Therefore, if filling is voluntary, shareholders' consent may be required.
Is there an ability to consolidate group estates?	No, insolvency proceedings for each legal entity are formally independent of one another. However, in the event that related entities are subject to insolvency proceedings, the administrators may cooperate to a certain degree. However, each administrator is required to act in the best interest of the creditors of his or her estate. Further, it is possible to concentrate insolvency proceedings over group companies at the same insolvency court.
Is there any court involvement?	Yes, the competent Insolvency Court makes decisions and oversees the entire procedure. In particular, the Insolvency Court decides whether the debtor is insolvent, decides how to resolve the insolvency, appoints the insolvency administrator and approves certain actions.

CZECH REPUBLIC

Insolvency proceedings

Who manages the debtor?	Subject to significant restrictions, the debtor continues to hold the right to manage estate assets until the decision on insolvency and then between the time of the insolvency decision and the decision on how to resolve the insolvency. Depending on the procedure, both decisions may be issued at once (the decision on insolvency may include the decision on how to resolve it) or after one another with a certain time period in between. In certain cases, the insolvency court could appoint an interim insolvency administrator even prior to the insolvency decision. In **bankruptcy** proceedings, the court-appointed insolvency administrator manages estate assets and assumes authorization to dispose of the estate, to exercise rights and to discharge obligations pertaining to the debtor in estate-related matters. In particular, the insolvency administrator exercises shareholder rights attached to shares in the insolvency estate, takes decisions on trade secrets and other areas of confidentiality, acts in the capacity of employer in relation to the debtor's employees, and is responsible for the operation of the debtor's business, bookkeeping and tax compliance. Insolvency administrators are also tasked with monetizing the estate. In **reorganization** proceedings, the debtor continues to hold these rights, but they are subject to significant restrictions. Such restrictions include a right of secured creditors to instruct the debtor on how to manage the security, provided that the instructions are geared towards good governance. By the Insolvency Court's decision on the reorganization's authorization, the performance of the function of the general meeting is suspended and the insolvency administrator decides in its competence instead of the general meeting, unless otherwise provided by the Insolvency Act. Once the reorganization plan has been adopted and approved, all actions must comply with it.
What is the level of disclosure of the process to voting creditors?	The Insolvency Court publishes information regarding the proceedings in the publicly accessible central web-based registry of insolvency proceedings. Such information includes decisions of the Insolvency Court, fillings filled with the Insolvency Court that are kept in debtor's file and other information, unless otherwise provided by the Insolvency Act. Since the creditors' committee/meeting may supervise the administrator's or the debtor's activities and they have a high level of access to additional information. In reorganization, additional information is provided to creditors to ensure voting on proposals is made on an informed basis; in particular, creditors receive prior access to the reorganization plan, report on reorganization plan and necessary additional documents.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Generally, insolvency proceedings may be commenced by or against any legal person, subject to the exceptions provided for by Czech law. In particular, insolvency proceedings may not be commenced against: (i) the Czech Republic; (ii) territorial self-governing unit; (iii) the Czech National Bank; (iv) the General Health Insurance Company of the Czech Republic; (v) the financial market guarantee system and funds managed by it; (vi) the Securities Traders Guarantee Fund; (vii) a public higher education institution; (viii) a legal person, if the state or a higher territorial self-governing unit has taken over or guaranteed all its debts before the commencement of insolvency proceedings; (ix) a financial institution, for as long as it holds a license or authorization in accordance with the special legislation governing its activities; (x) a health insurance company established pursuant to a special legal act, for the period for which it is a holder of a license to carry out public health insurance; and (xi) a political party or political movement at the time of the declared elections under a special legal regulation. Special insolvency rules apply to banks, insurance companies and other financial institutions, which are subject to the rules set out in part two, chapter IV of the Insolvency Act and the Act on the Recovery and Resolution of Financial Institutions, both implementing the EU Bank Recovery and Resolution Directive.

CZECH REPUBLIC

Insolvency proceedings

How long does it generally take a creditor to commence the procedure?	How long it takes creditors to commence insolvency proceedings depends heavily on the specifics of each case. If the petition is filed by the debtor, the debtor's management is typically quick to initiate proceedings, since insolvent trading can lead to the managers being personally liable. Within hours after the insolvency petition is filed, the Insolvency Court publishes certain details of the just-commenced proceedings in the publicly accessible central web-based registry of insolvency proceedings. Once an insolvency is reported to the competent Insolvency Court, the court is usually quick to issue its decision and open the proceedings.

EFFECT OF PROCESS

Does the debtor remain in possession with the continuation of incumbent management control?	Subject to significant restrictions, the debtor continues to hold the management control until the decision on insolvency and then between the time of the insolvency decision and the decision on how to resolve the insolvency. In **bankruptcy** proceedings, the court-appointed insolvency administrator manages estate assets and assumes authorization to dispose of the estate, to exercise rights and to discharge obligations pertaining to the debtor in estate-related matters. In particular, the insolvency administrator exercises shareholder rights attached to shares in the insolvency estate, takes decisions on trade secrets and other areas of confidentiality, acts in the capacity of employer in relation to the debtor's employees, and is responsible for the operation of the debtor's business, bookkeeping and tax compliance. Insolvency administrators are also tasked with monetizing the estate. In **reorganization** proceedings, the debtor continues to hold these rights, but they are subject to significant restrictions. Such restrictions include a right of secured creditors to instruct the debtor on how to manage the security, provided that the instructions are geared towards good governance. By the Insolvency Court's decision on a reorganization's authorization, the performance of the function of the general meeting is suspended and the insolvency administrator decides in its competence instead of the general meeting, unless otherwise provided by the Insolvency Act. Once the reorganization plan has been adopted and approved, all actions must comply with it.
What is the stay/moratorium regime (if any)?	A debtor who is an entrepreneur may, within seven days after filing the insolvency petition or within 15 days after the insolvency petition was filed by a creditor, file a motion with the Insolvency Court to grant a protection period: a moratorium. The Insolvency Court must then immediately decide on that motion. A moratorium period can only be granted if the majority of creditors (calculated according to the amounts of their claims) consent in writing to the granting of such a protection period. The protection period may be granted for a maximum period of three months and may be extended by up to 30 days if the majority of creditors consent in writing. Note that a debtor in liquidation cannot benefit from the moratorium regime. The moratorium granted by the Insolvency Court brings various consequences. For example, an agreement for the supply of utilities and raw materials, or for the supply of goods and services, may not be rescinded or withdrawn by the other party during the protection period because of a payment default by the debtor that occurred before the granting of the protection period, or because of any decrease in the total assets of the debtor. This restriction only applies if the debtor duly pays the amount that became due during the protection period or within 30 days before the granting of the protection period. It is also possible to file for moratorium prior to the commencement of the insolvency proceedings (e.g., when the insolvency is impeding). In such case, the information regarding the proceedings is not publicly available.

CZECH REPUBLIC

Insolvency proceedings

Is there a provision for debtor in possession super priority financing?	Yes, under certain circumstances and subject to approval by the creditors' committee/meeting (the Insolvency Court's approval is not necessary), new financing might be obtained (so-called "credit financing"). Creditors' claims on credit financing are preferential claims (claims against the estate) and are satisfied preferentially. The secured creditors have a priority right to provide the credit financing.
Can procedure be used to implement debt-to-equity swap?	Yes, in accordance with the terms of the reorganization plan and provided that the swapping creditor and the majority of creditors provide consent.
Are third party releases available?	In principle, third parties, such as co-debtors, guarantors or security providers, do not benefit from the procedure. The creditors' rights vis-à-vis co-debtors and guarantors of the debtor remain unaffected by the reorganization plan. It is therefore the responsibility of the parties to reach an agreement with third parties if the reorganization plan is of direct concern to them. The release of third-party debtors (including guarantors) therefore requires an express agreement with the relevant creditor.
Are the proceedings recognised abroad?	The proceedings are recognized by EU Member States on the basis of the EU Insolvency Regulation. Recognition by other countries may be based on domestic conflict-of-law provisions or principles, or bi- or multi-lateral agreements.
Has the UNCITRAL Model Law been adopted?	No.
How long, complex and expensive is the process?	The Insolvency Court must take necessary measures within 10 days after the filing of the insolvency petition, which will result in its decision. The Insolvency Court must decide on the insolvency petition immediately, in any case no later than 15 days after the filing, if the insolvency petition was filed by the debtor itself. If no reorganization plan is proposed or accepted, the liquidation of the debtor's assets may take several months to years, depending on the structure and complexity of the case. The process leading up to a reorganization plan usually takes several months. The costs depend on the size and complexity of the insolvency. However, the costs are usually high since they include the Insolvency Court's fees, the insolvency administrator's remuneration and expenses, and the creditor committee's remuneration and expenses.

CZECH REPUBLIC

Insolvency proceedings

Is there a mandatory set-off of mutual debts on insolvency?	No. For the period before the decision on insolvency, the law regulates the offsetting of the debtor and the creditor's mutual claims only in certain exceptional cases (e.g., prohibits it during moratorium). After the entity is declared insolvent, set-off is generally only allowed if the conditions for the set-off pursuant to the Czech Civil Code have been fulfilled prior to the decision on the insolvency, unless otherwise provided by the Insolvency Act. In particular, set-off is not admissible: • if the debtor's creditor has not become a registered creditor regarding the creditable claim • if the debtor's creditor has acquired a creditable claim as a result of an ineffective legal act • if the debtor's creditor was aware of the debtor's insolvency at the time the creditable claim was acquired • if the debtor's creditor has yet to pay the debtor's due claim (to the extent to which it exceeds the creditor's creditable claim) • in cases stipulated by an interim measure of the Insolvency Court
Can a debtor continue to carry on business during insolvency proceedings?	Yes, the operation of the debtor's business does not generally cease, unless otherwise provided by the Insolvency Act, by another act or by the Insolvency Court's decision. However, the actions of the debtor are limited, as mentioned above.

OTHER FACTORS

Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Yes. Wrongful and/or insolvent trading restrictions apply. Directors (members of a statutory body), de-facto directors, and, in exceptional cases, shareholders or supervisory board members may be liable. **Civil liability:** for late filing or payment after the company is deemed illiquid or over-indebted and for causing intentional damage contrary to public policy (e.g., where directors transfer assets upstream and cause insolvency as a result). Generally, if a person fails to file an insolvency petition or if the insolvency petition is delayed, the creditor may file an action for damages, which amount to the difference between the amount of the claim filed by the creditor and amount received by the creditor in insolvency proceedings to satisfy this claim (unless the person proves that the breach of the obligation to file an insolvency petition did not affect the amount for the creditor or that the breach was caused by facts which occurred independently of a person's will and which the person could not avert). Further possible civil consequences especially for members of a statutory body include the obligation to return consideration received from the company during the previous two years and a decision on their personal liability for the fulfilment of a company's obligations. **Criminal liability:** depending on the specific circumstances of each case, the persons above may be criminally liable, in particular for preferential treatment of a creditor, causing insolvency, causing damage to creditors, breaching obligations pertaining to the administration of someone else's property, fraud, setting aside or hiding assets or violating bookkeeping duties.

CZECH REPUBLIC

Insolvency proceedings

What is the order of priority of claims?

A distinction is made between the following types of claims:

- claims against the estate — the cash expenses and fee of the insolvency administrator, the creditor committee's remuneration and expenses, costs associated with the maintenance and administration of the debtor's estate, taxes, charges, duty, social security contributions, the state employment policy contribution, public health insurance contributions, creditors' claims on credit financing, etc.
- equivalent claims — the labor-law claims of the debtor's employees, creditors' claims to compensation for damage to health, government claims, etc.
- secured claims
- other regular claims
- subordinate claims
- claims of the debtor's shareholders or members arising from their participation in the company
- claims excluded from satisfaction in insolvency proceedings

Claims against the estate, equivalent claims and secured claims may be paid in full at any time after the insolvency decision has been taken.

The insolvency estate is monetized in bankruptcy proceedings. If the proceeds from the monetization of the estate are not enough to meet all of the claims, the insolvency administrator's fee and expenses are settled first, followed by creditors' claims arising during the moratorium, creditors' claims from credit financing, costs associated with the maintenance and administration of the estate, the labor-law claims of the debtor's employees, and creditors' claims to maintenance and to compensation for damage to health. Other claims are satisfied proportionally.

After the decision approving the final report becomes effective, the insolvency administrator submits a draft order on the distribution of the estate to the Insolvency Court, stating how much should be paid for each claim in the revised list of registered claims. On that basis, the Insolvency Court issues an order on the distribution of the estate, in which it determines the amounts to be paid to creditors. All creditors included in the distribution schedule are satisfied in proportion to the ascertained amount of their claim. Before the distribution, yet unpaid claims, which may be met at any time during the bankruptcy proceedings, are met, specifically claims against the estate, equivalent claims and secured claims.

The subordinated claims and claims of the debtor's shareholders or members arising from their participation in the company may only be satisfied after all other claims (i.e., claims against the estate, equivalent claims and secured claims and other regular claims), with the exception of excluded claims, have been satisfied.

Are there any pension liabilities?

To the extent that pension contributions (statutory and voluntary) are not paid by the employer, they can be registered in the debtor's insolvency as claims against the debtor and are subject to the same procedure as any other claims.

CZECH REPUBLIC

Insolvency proceedings

Is it possible to challenge prior transactions?

Creditors are treated equally in the debtor's insolvency proceedings, unless otherwise provided by the Insolvency Act. Legal acts (including omissions) by the debtor to reduce the chances that creditors will be satisfied or to favor certain creditors over others are valid, but ineffective (unenforceable).

There are three categories of such ineffective acts:

- **legal acts without adequate consideration**, which may be challenged if made within one year before the commencement of the insolvency proceedings (or three years if made in favor of a person close to the debtor)
- **preferential legal acts** resulting in a situation where one creditor, to the detriment of other creditors, receives greater satisfaction than they would otherwise have obtained in the bankruptcy proceedings, which may be challenged if made within one year before the commencement of the insolvency proceedings (or three years if made in favor of a person close to the debtor)
- **intentionally curtailing legal acts** where the debtor intentionally curtails the satisfaction of a creditor, if this intention was known to the counterparty or, in view of all of the circumstances, must have been known to it, which may be challenged if made within five years before the commencement of the insolvency proceedings

The ineffectiveness of the debtor's legal acts is established by an Insolvency Court ruling on an action brought by the insolvency administrator protesting the debtor's legal acts and omissions to set a transaction aside (which may be brought within one year from the date on which the decision on insolvency becomes effective). The debtor's consideration (or equivalent compensation) from ineffective legal acts forms part of the estate once the ruling upholding the action to set a transaction aside becomes effective.

Depending on the circumstances, certain acts of the debtor may also result in criminal liability.

CZECH REPUBLIC

Insolvency proceedings

COVID-19

Is state support for distressed businesses available?	Yes, including interest-free loans, guarantees for commercial loans, deferral of the income tax return and other tax relief and waivers, and salary reimbursement for employers.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	Such measures are now in the legislative procedure. The Chamber of Deputies (the Lower House) approved a governmental proposal on 8 April 2020 regarding COVID-19 related changes in the insolvency proceedings. The Senate (the Upper House) will discuss and likely approve the proposal by the middle of April. If the proposal is approved by the Senate and signed by the president, it will become effective upon publication in the Collection of Laws. The proposal includes: • suspension of debtors' obligation to file an insolvency petition • suspension of creditors' right to file an insolvency petition • prolongation of periods for challenging the effectiveness of legal acts • possibility of an extraordinary moratorium For further details, please refer to our client alert regarding insolvency reform in the Czech Republic (here).
Is further reform of the insolvency regime being discussed/anticipated? If so, give details.	Yes, please see above.

UPDATED MAY 6, 2020

ENGLAND

ENGLAND	Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration
INITIAL CONSIDERATIONS			
Can you take security over all types of assets, including working capital?	Yes. Prior to the commencement of procedure, security can be taken over cash, either as part of a floating charge or a fixed charge over a cash deposit in a bank account.	As per CVA. Yes, prior to the commencement of procedure, security can be taken over cash, either as part of a floating charge or a fixed charge over a cash deposit in a bank account.	As per CVA. Yes, security can be taken over cash, either as part of a floating charge or a fixed charge over a cash deposit in a bank account.
What is the nature of the process?	The Insolvency Act 1986 reorganization process is typically used to compromise unsecured liabilities and effect operational restructurings, e.g., compromising liabilities owed to landlords. This cannot be used to compromise secured liabilities, unless the consent of the secured creditor is obtained.	The Companies Act 2006 process is used for solvent or insolvent debt restructurings where the SoA is a "creditor scheme" (i.e., requires creditor approval). A SoA can be used to implement a range of transactions, including to effect takeovers, which is done by way of a "member scheme" (i.e., requires shareholder approval).	Administration is an Insolvency Act 1986 insolvency process that can be used to effect a pre-packaged sale of the business or assets effected by administrators. Administration also allows an insolvent company to continue to trade with protection from its creditors by virtue of an automatic statutory moratorium protecting the company from creditor claims. The administrators may continue to operate the business of a company for a period of time initially (two months) to achieve their objectives. Administrators must, within two months of the commencement of the administration, submit a proposal detailing the administrators' plan for the administration to creditors for approval.

ENGLAND	Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration
What is the solvency requirement?	This is available for solvent or insolvent entities (or those likely to become insolvent).	Available for solvent or insolvent entities (or those likely to become insolvent).	Available for insolvent entities (or those likely to become insolvent.) 'Insolvency' is not defined in the Insolvency Act 1986. Rather, the act contains the concept of a company being 'unable to pay its debts.' The key bases on which the Insolvency Act 1986 deems a company to be unable to pay its debts include the following: • If a sum of GBP 750 or more owed to a creditor is not paid within three weeks of being served a statutory demand. • If it is unable to pay its debts as they fall due, including contingent and prospective liabilities ('cash flow insolvency test'). • If the value of the company's assets are less than the amount of its liabilities, taking into account contingent and prospective liabilities (the 'balance sheet insolvency test').
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes.	No. The debtor must be capable of being wound up in England and must have "sufficient connection" with England or Wales. The governing law of debt may be changed to English law to provide jurisdiction (where debt documents permit).	Yes.
Is restructuring of both secured and unsecured claims possible?	No, secured and preferential creditors cannot be bound nor their rights altered without their express con-sent.	Yes.	Yes, if combined with a SoA.
Is there a classification of creditors and shareholders?	No.	Yes. Creditors are separated into classes. Classes are made up of creditors whose rights are not too dissimilar so as to allow them to consult together on the proposed plan.	Usually a restructuring within or as part of an administration takes the form of a SoA or CVA. In a SoA, the classing requirements will apply.

ENGLAND	Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration
Is there a requirement for voting approvals by shareholders?	Yes. Approval requires 50% or more in value of members/shareholders.	No shareholder approval is required in a creditor scheme, which is the type of scheme used to effect a debt restructuring.	Usually a restructuring within or as part of an administration takes the form of a SoA or CVA, which re-quire (specified majority) the consent of creditors. In a SoA, the classing requirements will apply.
Is there a requirement for voting approvals by creditors?	Yes. Approval requires 75% in value of those present and voting (excluding secured or part secured claims) and approval is invalid if more than 50% in value of creditors who are not connected to the debt-or vote against the CVA proposal ("**CVA Creditor Approvals**")	Each class of creditors must approve the SoA. Majority threshold being creditors representing: (i) 75% in value (ii) a majority in number A majority is only with reference to those creditors present and voting at the scheme meeting(s), rather than total creditors.	Usually a restructuring within or as part of an administration takes the form of a SoA or CVA, which re-quire (specified majority) consents of creditors. In a SoA, the classing requirements will apply.
Is there an ability to bind minority dissenting creditors?	Yes, subject to obtaining CVA Creditor Approvals (refer to row above).	Yes. Dissenting creditors in a particular class may be bound, subject to obtaining required approvals. There is no cross-class cram-down. Those with no economic interest and those whose rights are not affected need not be consulted. The court must be satisfied that the SoA proposed is substantively fair, which is understood as a scheme that an "intelligent and honest man, a member of the class concerned, and acting in respect of his interests might reasonably approve."	An administration initiated by the debtor or its directors does not require creditor consent, unless the creditor holds a qualifying floating charge — a form of English law security — which must (amongst other requirements) be over the whole, or substantially the whole, of the debtor's property. Usually a restructuring within an administration takes the form of a SoA or CVA, which require (specified majority) consents of creditors. In a SoA, the classing requirements will apply.

ENGLAND	Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration
COMMENCING THE PROCESS			
Who can commence?	The following can commence: (1) the debtor; (2) the administrator; or (3) the liquidator.	Primarily debtor can commence. In theory, creditors can also propose, although as a practical matter it is very difficult for them to do so, as they are unlikely to have access to sufficient information.	Administration may be commenced by: (1) the debtor; (2) directors; (3) a holder of a qualifying floating charge (see above); (4) any creditor (including a contingent or prospective creditor); or (5) the supervisor of a CVA. The process may be commenced by: (i) an application to court for an administration order; or (ii) the "out-of-court" procedure by the filing of a series of prescribed documents on the public record. However the "out-of- court" procedure is only available to the debtor, its directors or the holder of a qualifying floating charge (and the qualifying floating charge must be enforceable in accordance with its terms). SoA or CVA may be commenced in an administration by the administrators.
Is shareholders' consent required to commence proceedings?	No, but members'/shareholders' consent is required to approve the CVA (see above).	No.	No.
Is there an ability to consolidate group estates?	No, but can have inter-conditional CVAs, e.g., where approval of a CVA by all entities is a condition precedent to the CVA coming into effect.	No, but there can be inter-conditional SoAs, e.g., where approval of a SoA by all entities is a condition precedent to the SoA coming into effect.	No, but group insolvencies may be coordinated by appointing the same administrators to several group companies or under protocols. Simultaneous administrations can be used to effect the sale of the business or its assets across a group with the subsequent apportionment of sale proceeds between estates. Where a SoA or CVA is proposed within an administration, those processes' requirements must be com-plied with.

 ENGLAND	Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration
Is there any court involvement?	There is limited court involvement, unless there is a challenge. An insolvency practitioner must be appointed as nominee who must report to the court, which then decides whether to convene meetings to vote. Where the administrator or liquidator is the nominee, there is no requirement to report to court. A CVA can be challenged in court for unfair prejudice or material irregularity.	There is heightened court involvement at class meetings and approval of the scheme. A court can refuse to convene class meetings or approve the scheme, even if approved by statutory majorities, although this is rare in practice. The scheme can be challenged in court at the stage at which class meetings are convened (the convening hearing) or sanction stage (the sanction hearing).	Assuming the administrators are appointed using the "out-of-court" procedure, there is limited court involvement post-appointment, although the administrators may apply to the court for directions throughout administration. Where a CVA or SoA is proposed within an administration, court involvement will apply in accordance with those processes.
Who manages the debtor?	The board, under the supervision of the appointed nominee (referred to as the supervisor following approval of the CVA) manages the debtor.	Debtor management retains its powers. In particularly complex SoAs, a scheme supervisor may be appointed to adjudicate on scheme claims.	The licensed insolvency practitioner manages the debtor. Powers of management effectively cease upon the commencement of the administration.
What is the level of disclosure of the process to voting creditors?	Numerous statutory and insolvency rule requirements apply to the CVA proposal document. The extensive list of other prescribed matters required to be set forth in the proposal document includes the requirement to set out a comparison of the CVA outcome with liquidation outcomes.	Limited prescribed matters must be set out in the explanatory statement, giving considerable flexibility to those proposing the SoA. Broadly speaking, the explanatory statement must set out information an average creditor would expect to see or would require to make an informed decision on the proposed plan.	No statement is required for pre-packaged administration but a disclosure statement must be circulated to creditors (usually immediately) after the sale in compliance with the "Statement of Insolvency Practice 16", being the "SIP 16 statement". A copy of the SIP 16 statement should be included in the administrator's proposals and filed at Companies House.

ENGLAND	Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Generally speaking, English registered companies and companies formed outside England with their COMI in England can be subject to all forms of insolvency proceedings. There is no restriction on which types of companies can propose a CVA.	As per CVA. There is no restriction on which types of companies can propose a SoA.	There are special insolvency proceedings in respect of companies belonging to certain key industries, or which are involved in matters of particular public interest, e.g., UK banks, building societies and investment banks and providers of social housing. The UK has over 30 special or modified insolvency regimes, each with variations in the application of the standard corporate insolvency legislative framework. With regards to insurance companies or credit institutions, there are certain EU-wide legislative measures (which have been transposed into English law) that regulate the countries in which such an institution ought to be wound up.
How long does it generally take for a creditor to commence the procedure?	N/A (as creditor cannot apply)	While it is possible, in theory, for creditors to propose a SoA, as a practical matter it is very difficult for them to do so as they are unlikely to have access to sufficient information.	The quickest way for a creditor, more specifically a "qualifying floating charge holder", to commence administration proceedings is to initiate the process by utilizing the "out of court" route by filing a series of prescribed documents on the public record. The qualifying floating charge must be enforceable in accordance with its terms.
EFFECT OF PROCESS			
Does the debtor remain in possession with the continuation of incumbent management control?	Yes, subject to provisions of CVA and oversight of the CVA supervisor.	Yes, subject to provisions of SoA.	No. Directors' powers cease unless permitted by administrators.

ENGLAND	Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration
What is the stay/moratorium regime (if any)?	There is no automatic stay unless debtor is a "small company" or in an administration process, in which case administration moratorium will apply.	There is no automatic stay, unless combined with an administration process, in which case the administration moratorium will apply. This is often combined with voluntary bank lender standstill arrangement and (increasingly) with moratorium schemes. Moratorium schemes provide for standstills akin to bank standstill arrangements for bond-holders (e.g., Metinvest standstill scheme).	Automatic stay upon the appointment of the administrators. The statutory moratorium prevents creditors (including secured creditors) from enforcing their claims against the debtor without the prior consent of the administrators, or the court, and prevents the commencement of alternative insolvency procedures, but does not affect contractual rights (so does not prevent termination of contracts in accordance with their terms and it is typical for contracts to provide for termination when an administration process is commenced against a company).
Is there a provision for debtor-in-possession super priority financing?	No.	No.	Yes, but only if contractually agreed by creditors. Administrators may borrow after the commencement of the administration on super priority basis, provided they have secured the creditors consent.
Can the procedure be used to implement a debt-to-equity swap?	Yes but rare in practice given the inability of a CVA to compromise secured liabilities and the European market is, generally, a secured debt market.	Yes.	Yes, through pre-packaged sale, SoA or CVA.
Are third party releases available?	Yes, in principle (subject to any challenges by the creditors of unfair prejudice).	Yes, in principle e.g., where guarantees are provided under the terms of the facility documentation, the terms of which are being amended and pursuant to which the English court has jurisdiction.	No.
Are the proceedings recognized abroad?	Yes, in accordance with the EU Insolvency Regulation (EIR) domestically adopted version of UNCITRAL or other applicable conflict of laws principles and/or treaties. There are less recognitions options available post-Brexit as, absent agreement on the point, EIR will no longer be applicable to the UK post-Brexit.	There is no recognition under EIR, but it is recognizable in the EU under Judgment Regulation and Rome Convention and elsewhere in accordance with domestically adopted version of UNCITRAL (e.g., under Chapter 15 in the US) or other applicable conflict of laws principles and/or treaties.	Yes, in accordance with EIR, domestically adopted version of UNCITRAL or other applicable conflict of laws principles and/or treaties. As per CVA regarding Brexit.

ENGLAND	Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration
Has the UNCITRAL Model Law been adopted?	Yes, it has been enacted into UK law by the Cross-Border Insolvency Regulations 2006.	Yes.	Yes.
How long, complex and expensive is the process?	It is quick and efficient with few reporting obligations. It is often less expensive than formal insolvency procedures although, in practice, it is rare that it provides a holistic solution to a debtor's financial problems.	It is often time-consuming and expensive as a formal court application and at least two court hearings are necessary. It is most appropriate for large-scale balance sheet restructurings, although it can be used in smaller situations e.g., to restructure syndicated bank facilities where unanimous consent would other-wise be required.	Entry into administration can be relatively quick and the time involved will depend on the route by which the company enters administration, i.e., in-court or out-of-court route. Once a company is in administration, unless extended, the administrators' appointment automatically ceases to have effect 12 months from the day that the company entered administration. An administration can be extended by court order or by creditor consent (where the extension sought is for one year or less). As such, in practice, many administrations exceed the one-year period. It involves on-going but limited filing requirements.
Is there a mandatory set-off of mutual debts on insolvency?	No.	No.	Yes. In a liquidation, insolvency set-off is automatic and applies as of the date on which the liquidation commences. In an administration, insolvency set-off does not come into effect unless and until the administrators give notice of an intended distribution to creditors.

ENGLAND	Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration
Can a debtor continue to carry on business during insolvency proceedings?	The making of a CVA proposal need not impact the day-to-day operations of a company. Existing management remains in place.	As per CVA.	The powers of the company's directors cease upon the appointment of administrators. In certain circumstances, the administrators may continue to operate the business of a company for a period of time to achieve their objectives (a so-called "trading administration"), e.g., LBIE, Kaupthing and Heritable. Many administrations are "pre-packaged" or "pre-packs" with a very short period (days) between the commencement of the process and the completion of a sale when control returns to the new owner.
OTHER FACTORS			
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Yes, as administration or insolvent winding-up may follow after the implementation of the CVA. For ex-ample, the CVA may fail and be terminated in accordance with the terms of the CVA proposal.	Yes, as administration or insolvent winding-up may follow.	"Fraudulent trading" claims (where the debtor trades with actual intent to defraud creditors) are punishable by up to 10 years' imprisonment and/or an unlimited fine. The court can require a director who engages in "wrongful trading" to contribute to the insolvency estate. Wrongful trading occurs when director(s) (including shadow director(s) and de facto director(s)) who conclude, or should have concluded, that there is no reasonable prospect of the debtor avoiding an insolvent administration or liquidation fail to take every step that a reasonably diligent person would take to minimize potential loss to the debtor's creditors. The court may disqualify a person who engages in fraud or other breaches of duty from acting as a director for a period of up to 15 years.

ENGLAND	Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration
What is the order of priority of claims?	Order of priority are determined by proposal, although typically a creditor cannot be offered less than they would otherwise receive in an administration/liquidation. Preferential creditors need to be met in full and kept whole before other unsecured creditors entitled to distribution. Secured creditors retain security and cannot be compromised without consent.	As per CVA. Preferential and secured creditors will form different classes to secured creditors	Statutory order of priority: • fixed Charges/Creditors with a proprietary interest in assets • expenses, including those incurred under contracts entered into by administrators • preferential debts (primarily limited amounts due to employees and for administrations commenced from December 2020 will include certain tax debts owed to Her Majesty's Revenue and Customs). • a "prescribed part" (amount capped at GBP 800,000 for unsecured creditors) • floating charge holders • (balance of) unsecured creditors • deferred creditors (e.g., amounts owed to shareholders regarding declared but unpaid dividends) • shareholders All property in which the company has a beneficial interest will fall within its insolvent estate and be avail-able for the benefit of its creditors. Assets subject to a fixed charge, supplied under hire purchase agreements, subject to retention of title claims or which the company holds on trust for a third party are not beneficially owned by the company and therefore do not fall within the insolvent estate (although moratorium will apply to them).
Are there any pension liabilities?	This will automatically trigger a significant unsecured statutory debt under the Pensions Act for defined benefit pension schemes that are in deficit. This will trigger requirement to enter into government backed Pension Protection Fund.		

ENGLAND	Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration
Is it possible to challenge prior transactions?	N/A	N/A	**Preferences:** six months before the onset of insolvency but extended to two years before the onset of insolvency for transactions with a person who is "connected" to the debtor. **Transactions at undervalue:** two years before onset of insolvency and unlimited period if fraud is involved. **Voidable floating charges:** 12 months before the onset of insolvency (unless new money is provided). (In the case of a CVA and SoA, this is only a concern if administration or insolvent winding-up follow.)
COVID-19			
Is state support for distressed businesses available?	There is no specific statute or provision in relation to state support. However, the UK Government could put in place special/emergency/temporary provisions to provide support in the event of a systemically important business or particular sector being at risk. Steps have previously been taken by the UK Government to support distressed banks. In response to the COVID-19 pandemic, the UK Government has announced that up to GBP 330 billion of government support will be available to eligible businesses, through a number of schemes.		
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	The UK Government has proposed a temporary suspension of the wrongful trading provisions contained in the Insolvency Act 1986. The suspension applies retrospectively from 1 March 2020 for a period of three months (although the UK Government has stated this may be extended, if necessary). In brief, wrongful trading occurs when a director of a UK company that has gone into insolvent liquidation or ad-ministration proceedings continues to trade the company when they knew, or ought to have concluded, that there was no reasonable prospect of the company avoiding insolvency. The consequences of a director being found to have committed wrongful trading are severe. Directors can be held personally liable for the losses suffered by the company and its creditors and can also be disqualified from acting as a director. Directors do have a defense if they can show they took "every step" with a view to minimizing potential losses to the company's creditors.		

ENGLAND

Company Voluntary Arrangement ("CVA")	Scheme of Arrangement ("SoA")	Administration

Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.

In response to the COVID-19 pandemic, the UK Government has announced that it will prioritize certain reforms to the UK insolvency framework that were initially announced in August 2018. Further detail is still needed about these measures but a summary of the key reforms are set out below.

New moratorium

A new restructuring procedure will be implemented, a key feature of which will include a short moratorium. This procedure would be used by solvent companies facing financial difficulties in order to give them 'breathing space' to explore options for their continued viability.

The initial announcement from the UK Government is that the moratorium will be similar in scope to the existing administration moratorium that prevents creditor enforcement action. During the moratorium, a 'monitor' (being a licensed in-solvency practitioner) will be appointed. The monitor's role will be to (amongst other things) ensure the company is not insolvent and that a rescue of the business remains more likely than not. The moratorium will be for a period of 28 days with a 28-day extension possible, providing such an extension is approved by the required number of creditors.

New restructuring plan

The government has proposed introducing a new flexible restructuring procedure borrowing elements from the US Chapter 11 proceedings. It is designed to enable companies to implement a restructuring plan capable of binding all creditors, even where junior classes of creditors vote against the plan. In line with the English scheme of arrangement, it is intend-ed to be a flexible process with no formal entry requirement. In terms of approvals, the restructuring plan will need the consent of: (1) at least 75% in total value of the creditors (within each class who vote); as well as (2) more than 50% of the total value creditors who are not connected with the company.

This procedure will allow what is termed a "cross-class cram down." This is not currently permitted under English law and would allow the plan to be imposed even on an entire dissenting class of creditors. This cram-down will require a certain level of creditor approvals and it would need to be shown that certain creditors will be better off under the restructuring plan, as well as meeting certain other requirements around the distribution of proceeds to creditors.

Termination prohibition

Another reform announced is the prohibition of so called "ipso facto" termination clauses. In effect, such clauses give rise to a termination right following certain insolvency events or other financial conditions. This would mean that where a company enters either: (1) a formal insolvency process; (2) the new moratorium procedure outlined above; or (3) the new restructuring plan outlined above. Termination of certain contracts on these grounds will not be permitted. Termination on the basis of non-payment however will be preserved. Based on the announcements from the UK Government, it is expected these provisions will extend to contracts for supplies of goods and services, as well as to licenses for software and pa-tents. Certain types of financial products and services are expected to be exempt. Counterparties will be given the right to apply to court for permission to exercise an otherwise prohibited termination right.

UPDATED MAY 5, 2020

FRANCE

FRANCE	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
INITIAL CONSIDERATIONS				
Can you take security interest over all types of assets, including working capital?	Yes. Generally, creditors can take security interest over all types of assets including working capital. Taking security interest requires the specification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, non-possessory pledge and possessory pledge.	Creditors can take security interest over all types of assets including working capital, up to the day preceding the opening of safeguard proceedings. However, as of the opening of safeguard proceedings, security interests must be validated by the insolvency judge (*juge-commissaire*) or granted as part of the safeguard plan. Taking security interest requires the specification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, non-possessory pledge and possessory pledge.	Creditors can take security interest over all types of assets including working capital, up to the day preceding the opening of safeguard proceedings. However, security taken in the pre-rehabilitation hardening period may be subject to challenge. As of the opening of rehabilitation proceedings, security interests must be validated by the insolvency judge (*juge-commissaire*) or granted as part of the rehabilitation plan. Taking security interest requires the specification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, non-possessory pledge and possessory pledge.	Creditors can take security interest over all types of assets including working capital, up to the day preceding the opening of liquidation proceedings. However, security taken in the pre-liquidation hardening period may be subject to challenge. Taking security after the opening of liquidation proceedings is very unlikely.

FRANCE

	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
What is the nature of the process?	A confidential out of court insolvency or a pre-insolvency process intended to avoid the debtor entering into a formal insolvency involving: (1) the negotiation of an out-of-court payment plan with creditors; (2) a pre-packed asset sale; or (3) a pre-packed plan (accelerated financial safeguard or accelerated safeguard).	A court process to effect a financial and/or corporate restructuring that ends with a court judgment approving the safeguard plan. There are three types of *sauvegarde* proceedings: (1) safeguard proceeding (a proceeding commenced by the debtor to effect a restructuring where there is no requirement to have a prior failed conciliation) (2) accelerated safeguard proceedings (a proceeding used to cram down dissenting creditors following a failed conciliation) (3) accelerated financial safeguard proceedings (a proceeding used to cram down dissenting financial creditors and bondholders following a failed conciliation)	A court process to restructure cash-insolvent but viable companies leading to: (1) a court judgment approving a rehabilitation plan (*plan de redressement*); or (2) the sale of the business as a going concern (*plan de cession*).	A court liquidation process (where there is no prospect of recovery) effected by: (1) an individual asset sale; or (2) a sale of the business as a going concern (*plan de cession*).
What is the solvency requirement?	Debtors must: (1) not be cash-insolvent; or (2) be cash-insolvent for less than 45 days.	Debtors must not be cash-insolvent but facing difficulties that cannot be overcome.	Debtors must be cash-insolvent (*cessation des paiements*).	Debtors must be cash-insolvent (*cessation des paiements*) with no prospect of recovery.
Is there a requirement to demonstrate COMI ("centre of main interests")?	No. Regulation (EU) 2015/848 on insolvency proceedings does not apply to conciliation proceedings.	Yes.	Yes.	Yes.
Is the restructuring of both secured and unsecured claims possible?	Yes.	Yes. Note: The court is not able (on its own initiative) to order the write down of any liability.	Yes. Note: The court is not able (on its own initiative) to order the write down of any liability.	No.

FRANCE

	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
Is there a classification of creditors and shareholders?	N/A	Creditors may be classed for voting purposes. **Creditor Classes:** If: (1) the accounts of creditors have been certified by statutory auditors or prepared by chartered accountants; and (2) the debtor has more than 150 employees or annual turnover of more than EUR 20 million, creditor classes must be created. The classes are: (1) financial creditors; (2) "major suppliers" (suppliers holding more than 3% of total supplier claims); and (3) bondholders (where bonds have been issued by the debtor). All other creditors are consulted on an individual basis. The accelerated safeguard applies to companies that are either cash-solvent or cash-insolvent for less than 45 days at the time for conciliation was filed if either: (1) they compile a consolidated financial statement; or (2) their financial statements have been audited or established by a certified accountant and they reach at least one of the following thresholds: (1) a minimum of 20 employees; (2) a minimum annual turnover of EUR 3 million (without value added tax); or (3) a minimum total balance sheet of EUR 1.5 million. In an "accelerated financial safeguard," only the financial creditors and bondholders are involved.	Creditors may be classed for voting purposes. **Creditor Classes:** If: (1) the accounts of creditors have been certified by statutory auditors or prepared by chartered accountants; and (2) the debtor has more than 150 employees or annual turnover of more than EUR 20 million, creditor classes must be created. The classes are: (1) financial creditors; (2) "major suppliers" (suppliers holding more than 3% of total supplier claims); and (3) bondholders (where bonds have been issued by the debtor). All other creditors are consulted on an individual basis. Financial and trade creditors are given the opportunity to put forward an alternative plan (but not bondholders), which is rare in practice). **Approvals:** At least two-thirds in value of (secured and unsecured) creditors of each class must approve the rehabilitation plan. Any agreement between creditors to subordinate their claims must be taken into account under the terms of the plan. **Conflict between classes:** There is no cross-class cram down under French law. The plan must be approved by all creditors' classes. Note: Interests for loans with a duration of one year or more, or for contracts having a deferred payment of one year or more, will continue to accrue but cannot bear interest (no compound interests).	N/A

FRANCE	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
		Financial and trade creditors are given the opportunity to put forward an alternative plan (but not bondholders), which is rare in practice). **Approvals:** At least two-thirds in the value of (secured and unsecured) creditors of each class must approve the safeguard plan. Any agreement between creditors to subordinate their claims must be taken into account under the terms of the plan. **Conflict between classes:** There is no cross-class cram down under French law. The plan must be approved by all creditors' classes. Note: Interests for loans with a duration of one year or more, or for contracts having a deferred payment of one year or more, will continue to accrue but cannot bear interest (no compound interests).		
Is there a requirement for voting approvals by shareholders?	There is no shareholder vote unless the conciliation agreement provides for share capital changes (such as capital increase or decrease).	There is no shareholder vote unless a safeguard plan provides for share capital changes (such as capital increase or decrease).	There is no shareholder vote unless a rehabilitation plan provides for share capital changes (such as capital increase or decrease). In exceptional circumstances, the court can cram the shareholders down.	N/A

FRANCE	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
Is there a requirement for voting approvals by shareholders creditors?	N/A	Yes, as part of creditor classes (see above).	Yes, as part of creditor classes (see above).	N/A
Is there an ability to bind minority dissenting creditors?	No.	Yes. The court will approve the safeguard plan if: (1) the creditor classes (if applicable) and any bondholders approve the safeguard plan; and (2) the court is satisfied the plan protects the interests of creditors as a whole. In this scenario, the approved plan can impose debt-equity-swap, debt write-off and debt termed out for more than 10 years. The safeguard plan will be binding on all members of the creditor classes and the bondholders, including any dissenting member of a class (including secured creditors). If the plan is not approved by the classes, the debt can be termed out by the court for a period of 10 years maximum. Note: In case the plan is rejected by the classes, the court cannot impose any debt-to-equity swap or debt write-off of principal or interest claims in a term-out scenario.	Yes. The court will approve the rehabilitation plan if: (1) the creditor classes (if applicable) and any bondholders approve the rehabilitation plan; and (2) the court is satisfied the plan protects the interests of creditors as a whole. In this scenario, the approved plan can impose debt-equity-swap, debt write-off and debt termed out for more than 10 years. The rehabilitation plan will be binding on all members of the creditor classes and the bondholders, including any dissenting member of a class (including secured creditors). If the plan is not approved by the classes, the debt can be termed out by the court for a period of 10 years maximum. Note: In case the plan is rejected by the classes, the court cannot impose any debt-to-equity swap or debt write-off of principal or interest claims in a term-out scenario.	N/A

FRANCE

	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
COMMENCING THE PROCESS				
Who can commence?	(1) Debtor.	(1) Debtor.	(1) Debtor; (2) any creditor; or (3) the public prosecutor.	(1) Debtor; (2) any creditor(s); or (3) the public prosecutor.
Is the shareholder's consent required to commence proceeding?	No, however, if the bylaws provide otherwise, it may be recommended to the directors to obtain the board authorization.	No, however, if the bylaws provide otherwise, it may be recommended to the directors to obtain the board authorization.	No, however, if the bylaws provide otherwise, it may be recommended to the directors to obtain the board authorization.	No, however, if the bylaws provide otherwise, it may be recommended to the directors to obtain the board authorization.
Is there an ability to consolidate group estates?	N/A	No. Practically, it is possible to co-ordinate group insolvencies by appointing the same administrator(s).	No. Practically, it is possible to co-ordinate group insolvencies by appointing the same administrator(s).	N/A
Is there any court involvement?	There is limited court involvement. The conciliator is appointed by the president of the court. The conciliator assists the parties during the proceeding. The agreement may be acknowledged by the president of the court (confidential) or by the court (the decision may be made public then but not the terms of the agreement).	The court is involved in the process. The court (*tribunal de commerce*) opens proceedings and ultimately approves the plan. Specialized courts have jurisdiction for large companies fulfilling certain conditions. The insolvency judge (*juge-commissaire*) supervises the bankruptcy officers and grants certain authorizations (e.g., for settlement agreements, disposal of individual assets etc.). The process is carried out by the bankruptcy officers.	The court is involved in the process. The court (*tribunal de commerce*) opens proceedings and ultimately approves the plan. Specialized courts have jurisdiction for large companies fulfilling certain conditions. The insolvency judge (*juge-commissaire*) supervises the bankruptcy officers and grants certain authorizations (e.g., for settlement agreements, disposal of individual assets etc.). The process is carried out by the bankruptcy officers.	The court is involved in the process. The court (*tribunal de commerce*) opens the proceedings. The insolvency judge (*juge-commissaire*) supervises the liquidator and grants certain authorizations (e.g., sale of the assets).

FRANCE

	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
Who manages the debtor?	The debtor remains in possession. The court (*tribunal de commerce*) appoints a conciliator that has a supervisory role and assists with third-party negotiations. Note: The debtor may propose the "conciliator."	The debtor remains in possession and management is supervised by the judicial administrator. All management decisions that go beyond ordinary actions must be approved by the insolvency judge beforehand. The court (*tribunal de commerce*) appoints an insolvency judge, judicial administrator(s) and, upon their request, one to five advisors (from the creditors). At least two administrators and creditors' representatives must be appointed by the court, if the net revenues of the debtor or of one of the companies mentioned below reach at least a threshold of EUR 20 million and the debtor either: (1) owns at least three secondary establishments located in the jurisdiction of another commercial court than the one the debtor is registered in (2) owns or controls at least two companies against which safeguard, rehabilitation or liquidation proceedings have commenced (3) is owned or controlled by a company against which safeguard, rehabilitation or liquidation proceedings have commenced and that owns or controls another company against which safeguard, rehabilitation or liquidation proceedings have commenced	The debtor remains in possession and management is assisted by the judicial administrator. All management decisions that go beyond ordinary actions must be approved by the insolvency judge beforehand. All cash payments must be approved by the judicial administrator. The court (*tribunal de commerce*) appoints an insolvency judge, judicial administrator(s) and, upon their request, one to five advisors (from the creditors). At least two administrators and creditors' representatives must be appointed by the court, if the net revenues of the debtor or of one of the companies mentioned below reach at least a threshold of EUR 20 million and the debtor either: (1) owns at least three secondary establishments located in the jurisdiction of another commercial court than the one the debtor is registered in (2) owns or controls at least two companies against which safeguard, rehabilitation or liquidation proceedings have commenced (3) is owned or controlled by a company against which safeguard, rehabilitation or liquidation proceedings have commenced and that owns or controls another company against which safeguard, rehabilitation or liquidation proceedings have commenced	The debtor management does not remain in control. The liquidator takes control of the debtor. The court (*tribunal de commerce*) appoints an insolvency judge, a liquidator and one to five advisors (from the creditors).

FRANCE

	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
What is level of disclosure of process to voting creditors?	N/A	There is no disclosure concept under French law in regards to the proposed plan. However, the law provides for the minimum content of the plan to be disclosed (prospects of rehabilitation, terms of payment of the debt, employment level etc.).	There is no disclosure concept under French law in regards to the proposed plan. However, the law provides for the minimum content of the plan to be disclosed (prospects of rehabilitation, terms of payment of the debt, employment level etc.).	N/A
What entities are excluded from customary insolvency or reorganization proceedings, and what legislation applies to them?	Credit institutions, investment funds and mutual insurances are excluded from Chapter 6 of the French Commercial Code. The *Autorité de contrôle prudentiel et de résolution* (ACPR) supervises their derogatory insolvency proceedings. As such, the following provisions are applicable with respect to credit institutions: L. 613-24 et seq. of the French Monetary and Financial Code. Regarding insurances, Article L. 310-25 of the French Insurance Code applies. Lastly, regarding health insurance, Article L. 212-15 of the French Mutual Code applies.			
How long does it generally take for a creditor to commence the procedure?	N/A	N/A	Creditors may sue to obtain the opening of a rehabilitation proceeding. There is no statutory period; it depends on the court's workload.	Creditors may sue to obtain the opening of a liquidation proceeding. There is no statutory period; it depends on the court's workload.
EFFECT OF PROCESS				
Does the debtor remain in possession with the continuation of incumbent management control?	Yes. Debtor management remains in possession (including powers of disposal).	Yes. Where a judicial administrator is appointed, debtor management retains its powers and administrators' powers are limited overseeing debtor's decisions. Note: In practice, in case of a safeguard, the judicial administrator's intervention remains limited. Where no judicial administrator (small companies) is appointed, debtor's management retains all powers, including power to write checks and conclude new contracts.	The debtor remains in possession and the judicial administrator assists the debtor in the management of the business and assets and only in exceptional circumstances (e.g., in the case of wrongful trading) does the administrator replace debtor management (court to determine).	No. Power to manage the business and dispose of the debtor's assets passes to the liquidator.

FRANCE	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
What is the stay/moratorium regime (if any)?	No.	There is an automatic stay upon the opening of safeguard proceedings. The stay prevents the enforcement of judgments obtained pre-filing; collection activities, foreclosures, contract terminations and repossessions of property, subject to certain limited statutory exceptions (e.g., set off and/or payment for return of goods subject to ROT).	There is an automatic stay upon the opening of rehabilitation proceedings. The stay prevents the enforcement of judgments obtained pre-filing; collection activities, foreclosures, contract terminations and repossessions of property, subject to certain limited statutory exceptions (e.g., set off and/or payment for return of goods subject to ROT).	There is an automatic stay upon the opening of liquidation proceedings. The stay prevents enforcement of all creditors' claims and rights arising prior to opening, subject to certain limited statutory exceptions (e.g., set off and/or payment for return of goods subject to ROT).
Is there a provision for debtor-in-possession super priority financing?	Yes. There is 100% super-priority for "new money" injected at the time of the court confirmed conciliation agreement or during the process (if a conciliation is ultimately confirmed).	Limited. There is priority for "new money" injected during the process, with prior authorization from the insolvency judge, for the purposes of financing the business during the process.	Limited. There is priority for "new money" injected during the process, with prior authorization from the insolvency judge, for the purposes of financing the business during the process.	N/A

FRANCE

	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
Can procedure be used to implement debt-to-equity swap?	Yes, in accordance with the terms of the conciliation and subject to the vote of the shareholders.	Yes, in accordance with the terms of the conciliation and subject to the vote of the shareholders.	Yes, shareholdings can be diluted through the appointment of an ad hoc administrator who can exercise the voting rights of uncooperative shareholders to approve an increase in share capital for subscription by a third party if the debtor's equity value is lower than half its share capital. Moreover, the court has the possibility to squeeze out shareholders under the following restrictive conditions: (i) the shareholders have refused to implement the plan; (ii) the debtor has a minimum of 150 employees; (iii) the disappearance of the company is likely to cause serious disturbance to the local economy and employment; and (iv) the share capital reorganization is the only solution to allow business activities to continue (a partial or total sale of the company's assets must be contemplated before allowing such squeeze-out). Such a squeeze-out could take the form of: (i) a forced sale of all or part of the shares; or (ii) an imposed dilution of their equity stake.	No.
Are third party releases available?	No.	No.	No.	No.
Are the proceedings recognized abroad?	N/A	Yes, in accordance with EIR or other applicable conflict of laws, principles and/or treaties for other countries.		
Has the UNCITRAL Model Law been adopted?	No.	No.	No.	No.

FRANCE	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
How long, complex and expensive is the process?	**Estimated timing:** A maximum of five months. **Costs:** Wary depending on various factors including: the debtors number of employees; the number of creditors etc.	**Estimated timing:** (1) Up to 18 months after filing for safeguard proceedings; (2) one month for financial accelerated safeguard proceedings; and (3) three months for accelerated safeguard proceedings. **Costs:** Vary depending on various factors including: the debtors number of employees; the number of creditors etc.	**Estimated timing:** Up to 18 months. **Costs:** Vary depending on various factors including: the debtors number of employees; the number of creditors etc.	**Estimated timing:** The timing of the process varies. Any creditor can request the court to order the liquidator to close the liquidation two years from date of judgment ordering liquidation. A simplified liquidation proceeding is available for small businesses which lasts one year (maximum). **Costs:** Vary depending on various factors including: the debtors number of employees; the number of creditors etc.
Is there a mandatory set-off of mutual debts on insolvency?	N/A	Set-off between pre- and post-petition claims that are deemed "connected" is allowed, provided the creditor filed, in due course, proof of claim for those pre-petition claims. The French Supreme Court held that obligations are connected when either: • they result from a single contract or they are carried out under a contract setting out the business relationship between the parties • the obligations are carried out under separate contracts, which constitute a single global contractual arrangement	Set-off between pre- and post-petition claims that are deemed "connected" is allowed, provided the creditor filed, in due course, proof of claim for those pre-petition claims. The French Supreme Court held that obligations are connected when either: • they result from a single contract or they are carried out under a contract setting out the business relationship between the parties • the obligations are carried out under separate contracts, which constitute a single global contractual arrangement	Set-off between pre- and post-petition claims that are deemed "connected" is allowed, provided the creditor filed, in due course, proof of claim for those pre-petition claims. The French Supreme Court held that obligations are connected when either: • they result from a single contract or they are carried out under a contract setting out the business relationship between the parties • the obligations are carried out under separate contracts, which constitute a single global contractual arrangement
Can a debtor continue to carry on business during insolvency proceedings?	N/A	The debtor continues to carry on its business as it always does.	The debtor continues to carry on its business as it always does.	The debtor is not allowed to carry on its business (the court may authorize temporary continuation of the activity).

FRANCE	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
OTHER FACTORS				
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	No.	No.	Yes. Wrongful and/or insolvent trading restrictions apply only if the debtor is unable to present a rehabilitation plan approved by the court. **Who can be liable:** Manager, directors, de-facto directors and, in exceptional cases, shareholders or supervisory board members can be liable. **Civil Liability:** The court may prohibit a director from managing, directing or controlling (directly or indirectly) any company for up to 15 years (*faillite personnelle* or *interdiction de gérer*). **Criminal Liability:** Misappropriation of funds or fraud results in imprisonment or fine (*banqueroute*).	Yes. Wrongful and/or insolvent trading restrictions apply. **Who can be liable:** Management, directors and de-facto directors can be liable. **Civil Liability:** (1) There is liability for assets shortfall (*responsabilité pour insuffisance d'actif*). (2) The court may prohibit a director from managing, directing or controlling (directly or indirectly) any company for up to 15 years (*faillite personnelle* or *interdiction de gérer*). **Criminal Liability:** Misappropriation of funds or fraud results in imprisonment or fine (*banqueroute*).

FRANCE	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
What is the order of priority of claims?	N/A	N/A	The creditors' rank on insolvency is complex. The following basic principles apply: (1) Since there is a stay on proceedings, creditors cannot enforce their rights relating to pre-insolvency debts. (2) A portion of an employee's pre-petition claims benefit from a preferential status. (3) Providers of new money as part of a workout agreement during conciliation proceedings. (4) In safeguard and rehabilitation proceedings, post-petition claims benefit from a statutory privilege provided that they either: (1) arise for the purposes of funding the observation period; or (2) represent consideration due to a lender, or to a provider of goods or services, in a business transaction directly connected to the company's activities continued during the observation period. (5) Post-petition claims must be paid when they fall due. (6) In liquidation proceedings, the creditors' ranking is the same as in safeguard or rehabilitation proceedings, and shareholders do not receive any repayment of their capital investment unless a surplus remains after all the creditors have been paid in full (which is extremely rare).	
Are there any pension liabilities?	N/A	Employers make pension contributions (on behalf of employees) to the relevant pension fund (e.g., determined according to employee status). The State Fund claims against the debtor as a secured creditor in respect of unpaid contributions.	Employers make pension contributions (on behalf of employees) to the relevant pension fund (e.g., determined according to employee status). The State Fund claims against the debtor as a secured creditor in respect of unpaid contributions.	Employers make pension contributions (on behalf of employees) to the relevant pension fund (e.g., determined according to employee status). The State Fund claims against the debtor as a secured creditor in respect of unpaid contributions.

FRANCE	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
Is it possible to challenge prior transactions?	N/A	N/A	**Relevant period:** 18 months prior to the commencement of rehabilitation. Some transactions are automatically void, that is, the court must declare these transactions void on petition by the administrator, the liquidator or the public prosecutor if performed during the hardening period (in accordance with Article L. 632-1, I, of the French Commercial code). In addition, any payment made, or any transaction entered into during the hardening period is also subject to optional voidance (that is, subject to the court's discretionary decision on petition by the administrator, the liquidator or the public prosecutor) if proper evidence is brought before the court that, at the time of the payment or transaction, the contracting party knew the company's insolvency. When dealing with intra-group transactions, this knowledge is presumed for companies belonging to the same corporate group (in accordance with Article L. 632-1, II and L. 632-2 of the French Commercial code).	**Relevant period:** 18 months prior to the commencement of liquidation. Some transactions are automatically void, that is, the court must declare these transactions void on petition by the administrator, the liquidator or the public prosecutor if performed during the hardening period (in accordance with Article L. 632-1, I, of the French Commercial code). In addition, any payment made, or any transaction entered into during the hardening period is also subject to optional voidance (that is, subject to the court's discretionary decision on petition by the administrator, the liquidator or the public prosecutor) if proper evidence is brought before the court that, at the time of the payment or transaction, the contracting party knew the company's insolvency. When dealing with intra-group transactions, this knowledge is presumed for companies belonging to the same corporate group (in accordance with Article L. 632-1, II and L. 632-2 of the French Commercial code).

FRANCE

	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
COVID-19				
Is state support for distressed businesses available?	Yes. Companies under conciliation are eligible to the state guarantee scheme for new money loans (up to 90%).	No. Companies under safeguard are not eligible to state guarantee scheme for new money loans (up to 90%).	No. Companies under rehabilitation are not eligible to the state guarantee scheme for new money loans (up to 90%).	No. Companies under liquidation are not eligible to the state guarantee scheme for new money loans (up to 90%).
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	**Freezing of cash-insolvency assessment** Until the expiry of three months after the date the health crisis is meant to have finished, which means at present until 24 August 2020, the relevant date at which cash-insolvency (*cessation des paiements*) is to be assessed is 12 March 2020. **Extension of deadlines** Ongoing conciliation proceedings are extended until the expiry of three months after the date the health crisis is meant to have finished, which means at present until 24 August 2020 (which means in effect extended by a period of five months). The three-month waiting period for initiating new conciliation proceedings does not apply. **Facilitated formalities and adjustment of procedural rules** Filing of court documents and procedural communications may be carried out electronically or by post. Hearings may be held virtually.	**Freezing of cash-insolvency assessment** Until the expiry of three months after the date the health crisis is meant to have finished, which means at present until 24 August 2020, the relevant date at which cash-insolvency (*cessation des paiements*) is to be assessed is 12 March 2024. **Extension of deadlines** Deadlines relating to safeguard proceedings and safeguard plans are extended. Bankruptcy officers may request the extension of all deadlines until the expiry of three months after the date the health crisis is meant to have finished, which means at present until 24 August 2020. **Facilitated formalities and adjustment of procedural rules** Filing of court documents and procedural communications may be carried out electronically or by post. Hearings may be held virtually.	**Freezing of cash-insolvency assessment** Until the expiry of three months after the date the health crisis is meant to have finished, which means at present until 24 August 2020, the relevant date at which cash-insolvency (*cessation des paiements*) is to be assessed is 12 March 2024. **Extension of deadlines** Deadlines relating to rehabilitation proceedings and rehabilitation plans are extended. Bankruptcy officers may request the extension of all deadlines until the expiry of three months after the date the health crisis is meant to have finished, which means at present until 24 August 2020. **Facilitated formalities and adjustment of procedural rules** Filing of court documents and procedural communications may be carried out electronically or by post. Hearings may be held virtually.	**Freezing of cash-insolvency assessment** Until the expiry of three months after the date the health crisis is meant to have finished, which means at present until 24 August 2020, the relevant date at which cash-insolvency (*cessation des paiements*) is to be assessed is 12 March 2024. **Extension of deadlines** Bankruptcy officers may request the extension of all deadlines until the expiry of three months after the date the health crisis is meant to have finished, which means at present until 24 August 2020. **Facilitated formalities and adjustment of procedural rules** Filing of court documents and procedural communications may be carried out electronically or by post. Hearings may be held virtually.

FRANCE

	Conciliation (Conciliation)	Safeguard Proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation (Liquidation judiciaire)
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	Yes. Directive (EU) 2019/1023 of 20 June 2019 ("**Insolvency Directive**") is meant to be transposed into French law before 17 July 2021. The "PACTE" law dated 22 May 2019 authorized the government to transpose the Insolvency Directive by ordinance.	Yes. Directive (EU) 2019/1023 of 20 June 2019 is meant to be transposed into French law before 17 July 2021. The "PACTE" law dated 22 May 2019 authorized the government to transpose the Insolvency Directive by ordinance.	Yes. Directive (EU) 2019/1023 of 20 June 2019 is meant to be transposed into French law before 17 July 2021. The "PACTE" law dated 22 May 2019 authorized the government to transpose the Insolvency Directive by ordinance.	Yes. Directive (EU) 2019/1023 of 20 June 2019 is meant to be transposed into French law before 17 July 2021. The "PACTE" law dated 22 May 2019 authorized the government to transpose the Insolvency Directive by ordinance.

UPDATED MAY 5, 2020

GERMANY

GERMANY

Regular insolvency proceedings	Insolvency plan/protective shield

INITIAL CONSIDERATIONS

Can you take security over all types of assets, including working capital?

In principle, you can take security over all types of property; however, taking securities follows German collateral security law whereupon securities must satisfy the principle of certainty in regards to specification; a third party must be able to identify exactly which assets are referred to. References to "working capital" as such would not be specific enough.

The most common forms of security over immovable property are as follows:

- Land charge (*Grundschuld*)
- Mortgage (*Hypothek*)

Notarization and registration in the land register (*Grundbuch*) are required.

- The most common forms of security over movable property are:
- Prolonged retention of tilte (*verlängerter Eigentumsvorbehalt*)
- Security assignment (*Sicherungsübereignung*)
- Pledge (*Pfand*)
- Accessory (land charge or mortgage extends to the accessory of the property)
- Rights and receivables (*Sicherungsabtretung*)

Within an insolvency plan/protective shield, the same fundamental principles of German law apply.

GERMANY

	Regular insolvency proceedings	Insolvency plan/protective shield
What is the nature of the process?	**Court process leading to:** (1) a (pre-packaged) asset sale; or (2) a liquidation. process, which usually results in the debtor's liquidation.	**Protective shield:** a three-month "moratorium" period (prior to insolvency proceedings) during which the debtor remains in possession and may propose an insolvency plan. However, note that the debtor must still file for insolvency to start the protective shield process as an out-of-court consensual process. **Insolvency plan:** a court process to restructure a company's debts.
What is the solvency requirement?	**The debtor must be:** (1) **illiquid:** unable to meet payment obligations when due (this does not include minor cash flow shortages of less than 10% of the total cash and where a shortfall may be resolved within three weeks); (2) **facing imminent illiquidity:** likely to become cash flow insolvent (imminent illiquidity alone triggers the right, but not an obligation to file for insolvency); or (3) **over-indebted:** assets do not cover liabilities (unless the debtor is more likely to survive than not).	**Protective shield:** (1) the debtor must not be illiquid; (2) intended restructuring must not be futile; and (3) the debtor will be rescued as a going concern. **Insolvency plan:** The debtor must be: (1) **illiquid:** unable to meet payment obligations when due (this does not include minor cash flow shortages of less than 10% of the total cash and where a shortfall may be resolved within three weeks); (2) **facing imminent illiquidity:** likely to become cash flow insolvent; or (3) **over-indebted:** assets do not cover liabilities (unless the debtor is more likely to survive than not).
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes	Yes
Is restructuring of both secured and unsecured claims possible?	No. Unsecured claims (including secured claims to the extent they are unsecured) may be written down or postponed.	Yes. It is a very flexible process where the restructuring or secured and unsecured debt may include: write down, postponement of payment and reduction/replacement of security.
Is there a classification of creditors and shareholders?	Yes **Classes:** (1) secured creditors; (2) unsecured creditors; and (3) subordinated creditors. Creditors with no economic interest do not vote.	Yes **Classes:** (1) secured creditors; (2) unsecured creditors (may be sub-classed, e.g., bondholders); (3) subordinated creditors; and (4) shareholders. A shareholder vote is required if shareholder rights are to be restructured.

GERMANY	Regular insolvency proceedings	Insolvency plan/protective shield
Is there a requirement for voting approvals by shareholders?	There is no shareholder vote.	A shareholder vote required if shareholder rights are to be restructured.
Is there a requirement for voting approvals by shareholders' creditors?	(1) Creditors' committee (supervises the debtor and administrator/custodian). Approval requires a simple majority in number of the voting members of the committee; and (2) Creditors' meeting (includes all creditors — including secured creditors — and is required to approve all material decisions). Approval requires a simple majority in value of all creditors' claims.	Approval requires: (1) a simple majority in number of creditors/ shareholders; and (2) a simple majority in value of creditors' claims in each class of creditor.
Is there an ability to bind minority dissenting creditors?	Yes. Dissenting creditors are bound if required creditor approvals are obtained.	Yes. Dissenting creditors may be crammed down if (1) their position under the insolvency plan is not expected to be worse than in regular insolvency proceedings, (2) they will receive an adequate return from the assets and (3) a majority of the classes have approved the plan. Subordinated creditors do not usually form a creditor class, do not vote on the plan and may suffer a 100% write-down.
COMMENCING THE PROCESS		
Who can commence?	(1) The debtor; or (2) any creditor(s) where there is cash-flow insolvency or (except in the case of partnerships) balance sheet insolvency and there is no reasonable prospect of recovery.	**Protective shield:** the debtor. **Insolvency plan:** (1) the debtor; (2) the insolvency administrator/ custodian; or (3) the creditors' meeting may commission the administrator to propose a plan.
Is the shareholder's consent required to commence proceedings?	No shareholder consent is required if filing for insolvency is mandatory. If filing is not mandatory, shareholder consent may be required (depending on the status of the debtor entity). Mandatory/non-mandatory filing depends on the status of the debtor. In the case of a GmbH, filing is mandatory where the debtor is illiquid or over-indebted; filing is not mandatory where the debtor faces imminent illiquidity.	No shareholder consent is required if filing for insolvency is mandatory. If filing is not mandatory, shareholder consent may be required (depending on the status of the debtor entity). Mandatory/non-mandatory filing depends on the status of the debtor. In the case of a GmbH, filing is mandatory where the debtor is illiquid or over-indebted; filing is not mandatory where the debtor faces imminent illiquidity.
Is there an ability to consolidate group estates?	No. Practically, it is possible to coordinate group insolvencies by appointing the same administrator(s) or, if there are several administrators for the different proceedings, by appointing a separate coordinator. Further, it is possible to concentrate insolvency proceedings over group companies at the same insolvency court.	No. Practically, it may be possible to coordinate group insolvencies by appointing the same administrator(s) or, if there are several administrators for the different proceedings, by appointing a separate coordinator. Further, it is possible to concentrate insolvency proceedings over group companies at the same insolvency court.

GERMANY

	Regular insolvency proceedings	Insolvency plan/protective shield
Is there any court involvement?	There is limited court involvement. **Proceedings are supervised by the court, which will include:** determining insolvency; initialling protective measures against the assets of the debtor; and appointing a preliminary administrator/custodian.	**Protective shield:** The court determines the period in which a draft insolvency plan must be prepared; appoints a preliminary custodian (for a maximum of three months); and may order protective measures (e.g., stop any enforcement proceedings). **Insolvency plan:** The court supervises the process and approves the plan. The court has the right to preliminary examination and can refuse to approve a proposed plan (on the basis of the plan's likelihood of success and feasibility) ex officio even before it is put up for voting. If the court does not reject the proposed plan, it schedules a meeting for discussion and voting, and submits the plan to the relevant parties (creditors' committee, works council, speakers' committee of the executive employees, debtor (if the plan is proposed by the administrator) and administrator (if the plan is proposed by the debtor)) for consideration and comment. If the insolvency plan is approved by the creditors and, as the case may be, the shareholders, the insolvency plan must be confirmed by the court.
Who manages the debtor?	Proceedings are usually run by an insolvency administrator. However, the debtor may request that the management retains control; the court will approve provided creditors' interests are not prejudiced. Where the debtor management remains in control, certain actions may require the custodian's consent.	**Protective shield:** Management retains its powers (exercised under the supervision of the preliminary custodian). Actions not in the ordinary course of business require the preliminary custodian's consent. If required to protect the interests of creditors, the court may revoke debtor-in-possession privileges. **Insolvency plan:** N/A
What is the level of disclosure of the process to voting creditors?	N/A	A summary of the proposed plan is provided to secured creditors and all creditors who have filed claims. The proposed plan includes sufficient information to ensure voting on proposals is made on an informed basis.

GERMANY

	Regular insolvency proceedings	Insolvency plan/protective shield
What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?	In principle, customary insolvency proceedings may be commenced by or against any legal person, subject to the following exceptions: Insolvency proceedings cannot be commenced against: (1) the Federal Republic of Germany or any of its states; or (2) public law institutions, public law corporations and public law foundations which are subject to state supervision. Specific rules apply to credit institutions. Only the Federal Financial Supervisory Authority (BaFin) can apply for insolvency after it has been informed of the need for restructuring measures by the credit institution. Pursuant to sec. 8 para. 1 sentence 4 of the Law on Bank Restructuring, the restructuring plan can stipulate the winding-up of the business. The provisions regarding the restructuring measures including the winding-up procedure are shaped along the lines of the insolvency plan under the German Insolvency Law (InsO) Specific rules apply to insurance companies. Pursuant to sec. 312 of the German Insurance Supervision Act (VAG), instead of any creditor, only the Federal Financial Supervisory Authority (BaFin) or the individual competent state authorities can apply for insolvency of an insurance company. The insolvency proceedings will progress in accordance with the provisions of the German Insolvency Code (InsO).	All entities subject to customary insolvency proceedings may be subject to reorganization proceedings within a protective shield/insolvency plan. A financial institution must inform the Federal Financial Supervisory Authority (BaFin) about their need for restructuring proceedings in order to enter into either (1) a recovery procedure pursuant to sec. 2 of the Law on Bank Restructuring or (2) a restructuring procedure pursuant to sec. 7 of the Law on Bank Restructuring. The financial institution must prove that the requirements for recovery proceedings are met and provide a recovery plan. BaFin then decides whether recovery or restructuring proceedings are appropriate. If BaFin does not see a reasonable possibility for the success of a recovery plan, it will initiate restructuring proceedings. The restructuring procedure is shaped along the lines of the insolvency plan provisions defined in the German Insolvency Code (InsO), but is modified by the provisions of the Law on Bank Restructuring (sec. 7 – 23 KredReorgG). As regards credit institutions and insurances, these are generally in line with the overall insolvency plan/protective shield proceedings, but with the same peculiarities as in regular insolvency proceedings.
How long does it generally take for a creditor to commence liquidation of an insolvent company?	A creditor can apply for the opening of insolvency proceedings. The creditor must substantiate that the debtor is illiquid or over-indebted. The insolvency court has to then hear the debtor first before initiating the insolvency proceedings. Between the application of the creditor and the initiation of the insolvency proceedings by the court, there is generally a minimum period of one week. Should the court then come to the conclusion that the application of the creditor might not be justified, the creditor must be given the possibility to provide further information, which then takes further time depending on the case.	N/A.

GERMANY

	Regular insolvency proceedings	Insolvency plan/protective shield
EFFECT OF PROCESS		
Does the debtor remain in possession with continuation of incumbent management control?	Proceedings are usually run by an insolvency administrator. However, the debtor may request that the management retains control; the court will approve provided creditors' interests are not prejudiced. Where debtor management remains in control, certain actions may require the custodian's consent **Note:** A creditors' committee may unanimously propose a specific administrator and the court may only refuse the appointment of such person if disqualified from office. At the first creditors' meeting, following the appointment of the insolvency administrator, the creditors may elect a different person to replace him/her.	**Protective shield:** Management retains control and a preliminary custodian is appointed by the court to supervise the process. Actions not in the ordinary course of business of the debtor require the preliminary custodian's consent. If required to protect the interests of creditors, the insolvency court may revoke debtor-in-possession privileges and appoint an insolvency administrator. **Insolvency plan:** An insolvency plan may be proposed and implemented irrespective of whether the insolvency proceedings are managed by the debtor or an insolvency administrator.
What is the stay/moratorium regime (if any)?	No automatic stay, but the court is required take all measures to avoid any detrimental effects to the financial status of the debtor (which may include an order for the stay of enforcement of secured rights). Upon the opening of regular insolvency proceedings, foreclosure and collection activities are or may be limited, and the enforcement of pre-filing judgments is suspended.	There is no automatic stay, but the court is required take all measures to avoid any detrimental impact to the financial status of the debtor (which may include an order for the stay of enforcement of secured rights). Upon the opening of regular insolvency proceedings, foreclosure and collection activities are may be limited, and the enforcement of pre-filing judgments is suspended.
Is there a provision for debtor-in-possession super-priority financing?	No	Yes **Insolvency plan:** The insolvency plan may provide for new lenders to have priority over unsecured creditors for a period of up to three years from the court's approval of the plan. **Requirements:** Money must have been provided during the three-month period of "surveillance" and the insolvency plan must provide for a cap on super-priority financing.
Is there debt-to-equity swap?	No	Yes, in accordance with the terms of the plan and provided that the swapping creditor provides consent. The process allows for a cramdown of equity holder(s) subject to fulfilment of certain criteria.
Are third-party releases available?	Yes. This is available in accordance with the terms of the plan.	Yes. This is available in accordance with the terms of the plan.

GERMANY

	Regular insolvency proceedings	Insolvency plan/protective shield
Are the proceedings recognised abroad?	Yes, in accordance with EIR, the domestically adopted version of UNCITRAL or other applicable conflict of laws principles and/or treaties for other countries.	
Has the UNCITRAL Model Law been adopted?	No.	No.
How long, complex and expensive is the process?	**Estimated timing:** several months or years. **Costs:** expensive as it involves court fees, insolvency administrator fees and creditor committee expenses. The cost will depend on the size and complexity of the debtor and claims.	**Estimated timing:** usually a few months. Proceedings may be followed by a supervision period where the proper fulfilment of the insolvency plan (particularly payments to creditors) is controlled by the custodian. This supervision period may take several months or years. **Costs:** expensive. The cost will depend on the size and complexity of the debtor and claims. There is limited scope to appeal a plan with a view to expediting the process.
Is there a mandatory set-off of mutual debts on insolvency?	No. If the netting situation existed already prior to the initiation of insolvency proceedings, the creditor generally has the option to set off his/her claim against the debtor. Set-off is, however, not possible if the creditor acquired the opportunity to set off by a transaction subject to challenging pre-insolvency transactions, or if the creditor acquired the claim from another creditor after insolvency proceedings began. In these cases, set-off is prohibited as it would disadvantage all other creditors.	According to statutory law, no. However, the insolvency plan can determine separate provisions regarding the netting of claims.
In what circumstances can a debtor continue to carry on business during insolvency proceedings?	The debtor may request that the management retains control (self-administration). He/she is then able to continue to carry on the business on his/her own, but under the supervision of a custodian. The request will be assented if it is foreseeable that it is not detrimental in terms of satisfaction of creditors.	Within protective shield proceedings, the debtor can apply for self-administration and at the same time propose a custodian (which the court can only object to if the custodian must be regarded as not sufficiently qualified). Within plan proceedings, the debtor can apply for self-administration, but the court must not follow the proposal in regards to the person that shall take the role as custodian; the court can decide on a custodian (*Sachwalter*) that the court deems qualified. After a successful request for self-administration within the protective shield, the debtor can plan and implement the business restructuring while being protected under the shield from enforcement measures even during the opening procedure (for up to three months). However, he/she will be supervised by a preliminary custodian. In addition, the plan proceedings aim to restructure the business as a going concern.

GERMANY

	Regular insolvency proceedings	Insolvency plan/protective shield
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Yes. Wrongful and/or insolvent trading restrictions apply. **Who can be liable:** directors and de-facto directors, and, in exceptional cases, shareholders or supervisory board members. **Civil liability:** late filing or payment after the company is deemed illiquid or over-indebted; and for causing intentional damage contrary to public policy (e.g., where directors transfer assets upstream and as a result cause insolvency). **Criminal liability:** fraud, breach of trust; for late or incorrect filing (punishable by imprisonment or a fine); and certain bankruptcy actions (e.g., setting aside or hiding assets), violation of bookkeeping duties, and fraudulent actions to prefer certain creditors or the debtor.	Yes. Wrongful and/or insolvent trading restrictions apply. **Who can be liable:** directors and de-facto directors, and, in exceptional cases, shareholders or supervisory board members. **Civil liability:** late filing or payment after the company is deemed illiquid or over-indebted; and for causing intentional damage contrary to public policy (e.g., where directors transfer assets upstream and as a result cause insolvency). **Criminal liability:** fraud, breach of trust; for late or incorrect filing (punishable by imprisonment or a fine); and certain bankruptcy actions (e.g., setting aside or hiding assets), violation of bookkeeping duties, and fraudulent actions to prefer certain creditors or the debtor.
What is the order of priority of claims?	**Statutory order of priority:** Segregation rights (e.g., simple title retention) Secured creditors Preferred claims of estate creditors (costs of the proceedings, certain tax claims triggered from the time of filing to the opening of the proceeding, and creditors' claims arising after the declaration of insolvency) Unsecured claims Interest and late payment charges Subordinated claims (intra-group loans, fines, interest)	**Statutory order of priority:** Segregation rights (e.g., simple title retention) Secured creditors Preferred claims of estate creditors (costs of the proceedings, certain tax claims triggered from the time of filing to the opening of the proceeding, and creditors' claims arising after the declaration of insolvency) Unsecured claims Interest and late payment charges Subordinated claims (intra-group loans, fines, interest)
Are there any pension liabilities?	Company pension schemes are secured by the pension security association and, potentially, by other security arrangements. These arrangements are not affected by insolvency proceedings. The pension liability usually transfers to the pension association. Thus, the debtor has no direct liability to employees. Employees submit claims to the association and if payments are made, the association claims against the debtor as an unsecured creditor. However, if the pension claim arises after the insolvency proceedings are opened, they are "preferred" claims which rank above unsecured claims in any distribution.	Company pension schemes are secured by the pension security association and, potentially, by other security arrangements. These arrangements are not affected by insolvency proceedings. The pension liability usually transfers to the pension association. Thus, the debtor has no direct liability to employees. Employees submit claims to the association and if payments are made, the association claims against the debtor as an unsecured creditor. However, if the pension claim arises after the insolvency proceedings are opened, they are "preferred" claims which rank above unsecured claims in any distribution.

GERMANY

	Regular insolvency proceedings	Insolvency plan/protective shield
Is it possible to challenge prior transactions?	**Relevant period:** three months prior to the filing of the insolvency petition. This period can be extended up to 10 years where there is an intention to prejudice creditors. **Requirements:** Any legal acts or transactions (e.g., contracts and transfers of assets) may be subject to a clawback if: (1) they are detrimental to the insolvency estate; (2) they put insolvency creditors at a disadvantage; and (3) any additional requirements of the relevant clawback action (e.g., as to the financial condition of the debtor and/or the parties' intentions at the time the legal act or transaction took place) are met.	**Relevant period:** three months prior to the tiling of the insolvency petition. This period can be extended up to 10 years where there is an intention to prejudice creditors. **Requirements:** Any legal acts or transactions (e.g. contracts and transfers of assets) may be subject to a clawback if (1) they are detrimental to the insolvency estate; (2) they put insolvency creditors at a disadvantage and if (3) any additional requirements of the relevant clawback action (e.g., as to the financial condition of the debtor and/or the parties' intentions at the time the legal act/transaction took place) are met.
Is state support for distressed businesses available?	State subsidies: Distressed businesses can receive state subsidies. State-owned banks can extend loans to businesses to help them out of financial difficulties if: (1) the cause of a business's crisis is known; and (2) a plan to overcome the crisis has already been developed. Reduced working hours: In the event a company reduces the employees' working hours, the employees' reduced pay from the company can be supplemented by reduced working hour pay from the relevant Federal Agency for Employment under certain circumstances. However, the payment is limited to six months. The Federal Agency for Employment will pay employees' salaries for three months — commonly starting with the application of the insolvency proceedings and ending when the formal proceedings are opened by the court.	State subsidies: distressed businesses can receive state subsidies. State-owned banks can extend loans to businesses to help them out of financial difficulties if: (1) the cause of a business's crisis is known; and (2) a plan to overcome the crisis has already been developed. Reduced working hours: in the event a company reduces the employees' working hours, the employees' reduced pay from the company can be supplemented by reduced working hour pay from the relevant Federal Agency for Employment, under certain circumstances. However, the payment is limited to six months. The Federal Agency for Employment will pay employees' salaries for three months — commonly starting with the application of the insolvency proceedings and ending when the formal proceedings are opened by the court.

GERMANY

	Regular insolvency proceedings	Insolvency plan/protective shield
COVID-19		
Is state support for distressed businesses available?	Companies affected by the COVID-19 pandemic can apply for a loan backed by the German government (80/90%) of up to one billion Euro, but capped at 25% of annual turnover, double the amount of salaries, liquidity needs for next 18 months (small companies) and 12 months (large companies) or 50% of the overall debt (if loan in excess of 25 million). However, only companies that did not experience financial difficulties prior to 31 December 2019 (i.e. companies that did not qualify as "undertakings in difficulty" pursuant to Article 2 No. 18. of the EU General Block Exemption Regulation (651/2014)) and are expected to be profitable in the long term are eligible for the loan.	Same as in regular insolvency proceedings.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	In response to the COVID-19 pandemic, the German legislator enacted a new law to suspend the mandatory obligations to file for insolvency proceedings until 30 September 2020 and to mitigate liability risks for managing directors and lenders. The suspension does not apply if the insolvency did not occur due to the consequences of the COVID-19 pandemic or if there is no prospect of resolving the insolvency. However, in case the debtor was not (yet) illiquid (i. e. cash-flow insolvent) by 31 December 2019, it is legally presumed that the insolvency was caused by the consequences of the COVID-19 pandemic and that it can be resolved. The suspension can be extended by ordinance until 31 March 2021. Insolvency proceedings are not to be opened upon a creditor petition filed between 28 March and 28 June 2020 if the debtor was not yet insolvent on 1 March 2020. Managing directors are exempted from liability for violations of statutory payment prohibitions when making payments in the ordinary course of business, particularly if those payments serve to maintain or resume business operations or to implement a restructuring concept. Such payments shall be deemed "compatible with the diligence of a prudent and conscientious manager".	Same as in regular insolvency proceedings.

GERMANY	Regular insolvency proceedings	Insolvency plan/protective shield
	The financing of businesses is facilitated by measures protecting lenders from liability risks as well as claw-back and avoidance risks for any new loans granted during the period when the insolvency filing obligation is suspended. A general exemption from claw-back and avoidance shall apply to cover transactions where the creditor receives performance from a debtor in accordance with agreed contract terms. Certain changes to the agreed contract terms shall also be exempted, such as certain changes to the agreed consideration or collateral, third party payments, as well as shortening or extension of payment terms. The protection of loans to companies is comprehensive, regardless of how much the borrower is affected by the COVID-19 pandemic.	
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	With the implementation of the EU Directive on Restructuring and Insolvency (2019/1023) a flexible preventive restructuring framework is to be introduced. This new mechanism will be available outside of formal insolvency proceedings to companies facing a "likelihood of insolvency". The framework's main features include the reorganization of the debtor's capital structure via a restructuring plan (with the possibility of cramming down dissenting creditors), a moratorium or stay of individual enforcement actions against the creditor and special protection for new and interim financing against claw-back and avoidance in case of subsequent insolvency proceedings. Although the envisaged introduction of a preventive restructuring framework is not specific to the COVID-19 pandemic, there is some debate as to whether the legislative process should be accelerated up in view of the challenges posed by the pandemic.	Same as in regular insolvency proceedings.

HONG KONG

HONG KONG	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
INITIAL CONSIDERATIONS			
Can you take security over all types of assets, including working capital?	Security can be taken over both immovable and movable property. With regards to immovable property, common forms of security include legal mortgage, equitable mortgage and fixed charges. With regards to movable property, common forms of security include mortgages, fixed charges and floating charges.	Security can be taken over both immovable and movable property. With regards to immovable property, common forms of security include legal mortgage, equitable mortgage and fixed charges. With regards to movable property, common forms of security include mortgages, fixed charges and floating charges.	Security can be taken over both immovable and movable property. With regards to immovable property, common forms of security include legal mortgage, equitable mortgage and fixed charges. With regards to movable property, common forms of security include mortgages, fixed charges and floating charges.

HONG KONG

What is the nature of the process?	**Bankruptcy** (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	**Scheme of Arrangement**	**Reorganisations, Restructurings and Work-Outs**
	Under the Companies (Winding-Up and Miscellaneous Provisions) Ordinance (Cap. 32) (CWUMPO), there are three types of processes: **Members winding-up:** This is voluntary in nature and happens when shareholders no longer wish for the company to continue trading. The company's creditors will be paid in full on winding-up, and the remaining surplus is distributed among shareholders. **Creditors winding-up:** This is voluntary in nature. Where a company is insolvent and there is no way of avoiding liquidation, directors and shareholders can (in the absence of a creditor petitioning the court) place the company into creditors' voluntary liquidation. **Compulsory liquidation:** This is compulsory in nature upon a court's issuance of a winding-up order after an application (a petition) is submitted by a shareholder, a director or a creditor of the company.	**A court process** involving: (1) the company and (a) its creditors (or any class of them), and/or (b) its members (or any class of them) proposing to enter into a scheme of arrangement; (2) the court exercising its discretion to order a meeting of the creditors or members (or a class thereof) (3) the court exercising its discretion to sanction the scheme, where the scheme is approved by relevant persons at the court-directed meeting The meetings of creditors/members are out of court processes, and the company may obtain creditor/member support via restructuring support agreements, but the results of the meetings will need to be reported to the court and be held in accordance to any guidelines/ orders laid out by the court.	This is a purely a contractual agreement between the company and its creditors to reschedule the company's debts, which does not involve the court. Note that the government is in the process of preparing a bill to introduce amendments to the corporate bankruptcy law in Hong Kong, including introducing a statutory corporate rescue procedure (CRP) in the first half of the 2020-2021 legislative year ("CRP Bill"). Under the latest proposals: (a) The CRP can be initiated by the company or a liquidator/provisional liquidator, upon the appointment of a provisional supervisor (PS). (b) The CRP will provide for a moratorium, during which no application for winding-up can be made, receivers appointed or other proceedings/processes commenced. (c) The PS will take temporary control of the company, consider options for rescuing the company and prepare proposals for a voluntary arrangement within a specified period for creditors' approval. (d) Consent of the "major secured creditors" will be needed before the CRP can proceed.

HONG KONG

	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
What is the solvency requirement?	**Members winding-up:** The company must be solvent. **Creditors winding-up:** The company must be insolvent. **Compulsory liquidation:** The company must be insolvent. It is a dual-test of (i) cash flow and (ii) ability to pay debts when they are due. A company being unable to pay its debts as evidenced by the failure to pay a statutory demand within 21 days is an act of presumed insolvency that would amount to a ground upon which the court can wind up a company.	There is no solvency requirement.	There is no solvency requirement.
Is there a requirement to demonstrate COMI ("centre of main interests")?	No. However, for unregistered non-Hong Kong companies, there is a requirement to show a "sufficient connection" with Hong Kong. There is a degree of similarity in the considerations.	No. However, for proposed scheme of arrangements involving unregistered non-Hong Kong companies, the court will only sanction the scheme if there is a "sufficient connection with Hong Kong."	No.
Is restructuring of both secured and unsecured claims possible?	Yes.	Yes.	Yes.
Is there a classification of creditors and shareholders?	Yes.	Yes. Creditors are separated into different classes.	N/A

HONG KONG

	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
Is there a requirement for voting approvals by shareholders?	This depends on the type of liquidation process. In a creditors' voluntary liquidation or members' voluntary liquidation process, a company in its general meeting must first pass a special resolution to place the company into voluntary liquidation. There is no such requirement for shareholders' consent to be obtained prior to compulsory liquidation.	Approval is required by the (class of) members/ creditors proposing the scheme of arrangement. Approval means approval by 75% in value/of the voting rights, and more than 50% in number of the creditors, the members or the relevant class thereof (whichever is applicable). Where the scheme of arrangement involves a general offer (i.e., a share buy-back offer) or a takeover offer, the scheme must be approved by members representing 75% of the voting rights present and voting, and the votes cast against the scheme must not exceed 10% of the total voting rights attached to all disinterested shares.	No.
Is there a requirement for voting approvals by shareholders creditors?	No.		No. However, the success of a workout depends on all creditors agreeing to the terms of the restructuring, as any dissenting creditor can commence winding-up proceedings/ enforce judgments obtained.
Is there an ability to bind minority dissenting creditors?	Yes. All members/creditors are affected by the winding-up process.	Yes. If the scheme is approved, it is binding on all creditors.	N/A

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	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
COMMENCING THE PROCESS			
Who can commence?	Depending on the type of process, winding-up can be commenced by a shareholder, a creditor or the company itself. The court also has discretion to order a company to be wound up.	The company or any of the following may apply to the court to initiate the process: (a) any of its creditors (if the scheme is proposed to be entered into with the creditors) (b) any of the creditors within a certain class (if the scheme is proposed to be entered into with that class of creditors) (c) any of its members (if the scheme is proposed to be entered into with the members) (d) any of the members within a certain class (if the scheme is proposed to be entered into with that class of members)	The company and its creditors can agree on a workout at any time.
Is shareholder's consent required to commence proceeding?	This depends on the type of liquidation process. In a creditors' voluntary liquidation or members' voluntary liquidation process, a company in its general meeting must first pass a special resolution to place the company into voluntary liquidation. There is no such requirement for shareholders' consent to be obtained prior to compulsory liquidation.	No.	No.
Is there an ability to consolidate group estates?	No.	No.	This would depend on the terms of the arrangement.

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	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
Is there any court involvement?	Throughout the administration of the compulsory winding-up of a company, the court maintains a supervisory role. The court's approval is also required for certain matters, including the appointment of provisional liquidators and liquidators. As liquidators and provisional liquidators act as officers of the court in the management of the company during the compulsory liquidation or restructuring process, they may seek directions from the court and affected parties may also apply to the court for any orders relating to the debtor's bankruptcy, e.g., application for a validation order.	Yes. The meeting at which the scheme is approved must be summoned by the court, and, after approval is obtained, the scheme must be sanctioned by the court before it becomes binding.	No.
Who manages the debtor?	Depending on the type of liquidation, the process is commenced and controlled by different parties. In a members' voluntary liquidation, the members control the winding-up. In a creditors' voluntary liquidation, the creditors have control of the liquidation. In a compulsory liquidation, the application to the court for a winding-up petition can be made by a creditor, a shareholder or the company itself. Once appointed, the provisional liquidators control the liquidation.	Persons in control before the procedure is initiated (the directors, receivers or liquidators (if the company is undergoing a winding-up procedure)) retain control.	The company's management retains control during the workout. Once a workout is agreed, the company will operate under the terms of its arrangement.

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	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
What is level of disclosure of process to voting creditors?	In a creditors' voluntary liquidation, at the same time as summoning the shareholders' meeting, the company must give notice of a meeting of creditors via an advertisement in the Government Gazette and in one Chinese language and one English language newspaper. The directors must also lay out a full statement of the company's affairs as well as a list of creditors (with an estimated amount of their claims) before the meeting. In compulsory liquidation, the petitioner is obliged to give notice of the petition via an advertisement in the Government Gazette and in one Chinese language and one English language newspaper. Along with notice of the meetings of creditors and contributories (shareholders), which take place after a court winding-up order, the contributories and creditors can also obtain a copy of the full statement of the company's affairs.	After the court orders a meeting to be summoned, notice of the meeting must be sent or advertised to the relevant creditors/ members, with an explanatory statement explaining the effect of the scheme and stating any material interests of the company's directors and the effect of the scheme on those interests (or where notice is given by advertisement, stating where and how such an explanatory statement can be obtained).	This would depend on the terms of the arrangement.
What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?	Companies incorporated in Hong Kong or incorporated elsewhere but registered under CWUMPO or the Companies Ordinance may be wound up under all of CWUMPO's relevant provisions. On the other hand, unregistered companies can only be wound up by the court, subject to establishing sufficient connection to Hong Kong. However, they cannot be wound up voluntarily under CWUMPO. There are special provisions in the Banking Ordinance and Insurance Companies Ordinance when it comes to the winding-up of authorized and insurance institutions in Hong Kong, respectively. The insolvency of partnerships (excluding limited partnerships) is governed by the Partnership Ordinance.	N/A	N/A

HONG KONG	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
How long does it generally take for a creditor to commence the procedure?	This depends on the circumstances.	N/A	N/A
EFFECT OF PROCESS			
Does debtor remain in possession with continuation of incumbent management control?	Hong Kong case law states that, in the instance of a winding-up petition on just and equitable grounds, the appointment of a provisional liquidator operates to transfer to them the powers of the directors, who thereby cease to be the company's authorized agents. This means that, upon the appointment of the provisional liquidator, the managerial and operational powers of the directors in the company are vested in the provisional liquidator. The directors retain a limited residual power (for example, to resist the winding-up petition) but it is not of a managerial nature. Decisions regarding the operation of the company are vested in the provisional liquidator from the time of their appointment, and the directors' powers are suspended at that time.	Yes.	Yes.
What is the stay/moratorium regime (if any)?	There is no moratorium for voluntary liquidators; however, the court has discretion to stay legal proceedings on the application of a creditor, a contributory or the liquidator. However, where a winding-up petition has been presented, the company or any creditor or person obligated to contribute to the assets of the company may apply for a stay of proceeding	There is no formal moratorium. However, where a winding-up petition has been presented, the company or any creditor or person obligated to contribute to the assets of the company may apply for a stay of proceedings before a winding-up order is made.	There is no moratorium. Creditors can initiate winding-up proceedings at any time.

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	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
Is there a provision for debtor in possession super priority financing?	A debtor in liquidation can obtain additional finance. A liquidator can raise funds by offering securities of unsecured assets of the company. Such securities will take priority in accordance with the general rules on creditors' priority, and will not take priority over pre-existing security interest without the pre-existing security holder's consent.	The usual financing arrangements apply.	This would depend on the terms of the arrangement.
Can procedure be used to implement debt-to-equity swap?	No.	This would depend on the terms of the scheme.	This would depend on the terms of the arrangement.
Are third party releases available?	No.	Yes.	This would depend on the terms of the arrangement.
Are the proceedings recognised abroad?	This would depend on where recognition is sought.	This would depend on where recognition is sought.	N/A
Has the UNCITRAL Model Law been adopted?	No.	No.	No.
How long, complex and expensive is the process?	This depends on the circumstances.	The process typically takes six months to a year and can be expensive because of the court's involvement.	The process can take months or years, and the costs and complexity would vary.

HONG KONG

	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
Is there a mandatory set-off of mutual debts on insolvency?	Hong Kong has yet to enact legislation specifically applicable to set-offs in corporate insolvency. Notwithstanding this, set-off pursuant to the Bankruptcy Ordinance (section 35) applies where, before the company goes into liquidation, there have been mutual credits, mutual debts or other mutual dealings. The mutual dealings do not have to be in relation to the same transaction between the parties, although the mutual dealings must be between the same parties. In addition, mutual dealings are not restricted to debts incurred under contracts. In such circumstances, an account is taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party are set off against the sums due from the other. The effect of the existence of a set-off in a liquidation is that only the net balance owed will be paid to (or due from) the liquidator, and only one sum will be owed. The purpose behind section 35 is justice between the parties. If there were no such thing as a set-off in insolvency, it would mean a creditor was bound to pay their debt to the company in full and at once, but in relation to the debt owed to them by the company, they would have to enter proof in the liquidation and would be entitled to receive only a dividend from the liquidator months or even years later. In other words, to the extent that a set-off is available, the creditor gets 100% of the relevant amount and is in a better position than unsecured creditors who are reliant on a pari passu distribution.	There are no special principles of set-off that apply in schemes of arrangement.	No.

HONG KONG

	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
Can a debtor continue to carry on business during insolvency proceedings?	Members' voluntary liquidation and creditors' voluntary liquidation: The company must cease business operations. The company can only continue business operations where it is necessary to benefit the liquidation. Compulsory liquidation: When the winding-up order is made, the liquidator takes control of the company's property. For the liquidator to continue business operations, the approval of the court or the committee of committee of inspection is required. The company can only continue business operations where it is necessary to benefit the liquidation.	N/A	N/A
OTHER FACTORS			
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	There are none currently. However, the government is introducing a statutory corporate rescue procedure (CRP) in the first half of the 2020-2021 legislative year ("**CRP Bill**") to introduce insolvent trading provisions, under which a director would incur civil liability, and would be liable to pay compensation to the company if (i) the company incurs a debt, (ii) the company was insolvent at the time it incurred the debt or becomes insolvent as a result, and (iii) the director knew or ought to have known about the insolvency of the company. However, a statutory defense would be available to the director if (a) they took all reasonable steps to prevent the company from incurring the debt, or (b) incurring the debt formed part and parcel of initiating a CRP (which has yet to be introduced into law as well).	There are none currently. However, under the proposed insolvent trading provisions in the CRP Bill, a director could incur civil liability, and would be liable to pay compensation to the company if (i) the company incurs a debt, (ii) the company was insolvent at the time it incurred the debt or becomes insolvent as a result, and (iii) the director knew or ought to have known about the insolvency of the company. However, a statutory defense would be available to the director if (a) they took all reasonable steps to prevent the company from incurring the debt, or (b) incurring the debt formed part and parcel of initiating a CRP (which has yet to be introduced into law as well).	There are none currently. However, under the proposed insolvent trading provisions in the CRP Bill, a director could incur civil liability, and would be liable to pay compensation to the company if (i) the company incurs a debt, (ii) the company was insolvent at the time it incurred the debt or becomes insolvent as a result, and (iii) the director knew or ought to have known about the insolvency of the company. However, a statutory defense would be available to the director if (a) they took all reasonable steps to prevent the company from incurring the debt, or (b) incurring the debt formed part and parcel of initiating a CRP (which has yet to be introduced into law as well).

HONG KONG

	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
What is the order of priority of claims?	In insolvency proceedings, the assets available to the company are usually insufficient to satisfy all creditor claims. As a result, the priority or order of ranking of different claims is of utmost importance. In court liquidations, claims that are not secured are distributed in a statutory prescribed order that, in brief, is as follows: • costs and expenses properly incurred in preserving, realizing or gathering the assets of the company, including the liquidator's remuneration and disbursements • preferential creditors (e.g., certain debts due to employees or the government) • creditors secured by a floating charge • ordinary unsecured creditors (including any shortfall arising from secured creditors after realization of their security) • shareholders Secured creditors stand outside of the above priority of payments as they are entitled to look to the proceeds of their security.	N/A	N/A
Are there any pension liabilities?	No.	There are two types of pension schemes in Hong Kong: Mandatory Provident Fund Schemes and Occupational Retirement Schemes. Neither would be affected by a scheme of arrangement.	There are two types of pension schemes in Hong Kong: Mandatory Provident Fund Schemes and Occupational Retirement Schemes. Neither would be affected by a scheme of arrangement.

HONG KONG

	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
Is it possible to challenge prior transactions?	In all forms of liquidation, liquidators are empowered to investigate the affairs of a company and seek redress from the court where it considers that assets belonging to the company have been dissipated. If an order is made by the court, the relevant directors, company officers or creditors may be required to repay or restore the property to the company, or contribute to the assets of the company, as the court considers appropriate. Below are some examples of possible offenses that liquidators may investigate. • Unfair preference: the liquidator may challenge creditors who have received payments from the company and may have been preferred against other creditors within six months of commencement of the liquidation. The six-month period is increased to two years in the case of associates, which is broadly defined to include transfers between the company and its directors. • Disposition of property with intent to defraud creditors: this is voidable at the instance of the person prejudiced by the disposition, except if the property is disposed of for valuable consideration and in good faith to any person who has not received, at the time of the disposition, notice of the intent to defraud creditors. • Disposition after commencement of compulsory liquidation: these dispositions or payments are void and the recipients of these funds or assets have to return the funds or assets to the liquidator, unless a validation order has been made by the court.	Avoidance powers are only available to liquidators (i.e., on a winding-up).	Avoidance powers are only available to liquidators (i.e., on a winding-up).

HONG KONG

	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
	• Fraudulent trading: where the business is carried on with the intent to defraud creditors or for any other fraudulent purpose. • Misfeasance: where directors have breached their fiduciary duties to the company or have misapplied or retained property of the company for their personal benefit. At present, there is no legislation in Hong Kong that prohibits insolvent trading or the incurring of a debt by a company at a time it is unable to pay its debts as they fall due. There is only fraudulent trading, which has a higher. Where a company has entered into unprofitable contracts or its assets include land burdened with an onerous covenant, shares or stock in companies, or unsalable property, the liquidator may, with leave of the court, surrender or disclaim that contract or property within 12 months after the commencement of liquidation. The disclaimer is binding on the rights and interests of the company and will release the company and the property of the company from liability as far as is necessary.		
COVID-19			
Is state support for distressed businesses available?	The Trade and Industry Department operates an SME (small and medium-sized enterprise) Loan Guarantee Scheme that aims to help SMEs secure loans to meet working capital needs for general business uses or to secure loans from participating lending institutions for the purpose of acquiring business installations. The government guarantees 50% or more of approved loans, subject to a maximum of HKD 12-15 million, depending on the guarantee product.	The Trade and Industry Department operates an SME Loan Guarantee Scheme that aims to help SMEs secure loans to meet working capital needs for general business uses or to secure loans from participating lending institutions for the purpose of acquiring business installations. The government guarantees 50% of approved loans, subject to a maximum of HKD 12-15 million, depending on the guarantee product.	The Trade and Industry Department operates an SME Loan Guarantee Scheme that aims to help SMEs secure loans to meet working capital needs for general business uses or to secure loans from participating lending institutions for the purpose of acquiring business installations. The government guarantees 50% of approved loans, subject to a maximum of HKD 12-15 million, depending on the guarantee product.

HONG KONG

Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?

Bankruptcy

(In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)

There are no formal dispensations or restrictions on creditor actions. However, as part of the 2020-2021 budget, the financial secretary announced on 26 February 2020 that the government will introduce various measures to assist businesses in light of COVID-19 under the "Anti-epidemic Fund."

The government has set up an Anti-epidemic Fund in response to COVID-19, with a budget of HKD 30 billion in the first round and more than HKD 130 billion in the second round.

A. The first round of relief approved by the Legislative Council on 21 February 2020 includes:

one-off grants for certain industries/ businesses e.g. food license holders for the sum of HKD 80,000 to HKD 200,000 each; other subsidies for licensed travel agents, passenger transport industry, catering and the retail sector

B. The second round of relief approved by the Legislative Council on 18 April 2020 includes:

(i) HKD 81 billion budget for the "Employment Support Scheme" whereby the government will provide a capped wage subsidy to eligible employers to retain employees and avoid redundancies for six months

(ii) special 100% loan guarantee under the SME Financing Guarantee Scheme("**Special 100% Scheme**")

As part of the Anti-epidemic Fund, the government has introduced the Special 100% Scheme, whereby the government will introduce from 20 April 2020 to 19 April 2021 a concessionary low-interest and government-

Scheme of Arrangement

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Reorganisations, Restructurings and Work-Outs

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	Bankruptcy (In this context used to refer to corporate bankruptcy (more commonly referred to as insolvency and not bankruptcy of individuals)	Scheme of Arrangement	Reorganisations, Restructurings and Work-Outs
	guaranteed loan capped at HKD 4 million, which is introduced under the existing SME Financing Guarantee Scheme. The Special 100% Scheme is available to SMEs with fewer than 100 persons (manufacturing) or fewer than 50 persons (non-manufacturing). Under the Special 100% Scheme, the participating institution (i.e., bank) will be responsible for vetting eligibility, and the loans will be transferred to Hong Kong Mortgage Corporate Limited (under the HK government). There will be a "principal moratorium" of six months, during which only interest payments have to be made, and this can be extended from six months to one year by application to the relevant participating institution. (iii) measures to reduce salaries taxes subject to a cap of HKD 20,000 per person, and "deferment of salaries tax, personal assessment and profit tax" falling due from April to June 2020 for three months (iv) capped fee waivers of government rates for non-domestic parties, rentals and certain Companies' Registry-related fees (v) grants and one-off subsidies for an extended list of industries and businesses, e.g., aviation sector, places of entertainment and amusement	guaranteed loan capped at HKD 4 million, which is introduced under the SME Financing Guarantee Scheme (an existing scheme where the government provides varying degrees of guarantees to SMES to secure loans from participating lending institutions for the purpose of acquiring business installations and equipment or meeting working capital needs of general business uses). SMEs are small and medium enterprises with fewer than 100 persons (manufacturing) or fewer than 50 persons (non-manufacturing). Under the Special 100% Scheme, the participating institution (i.e., bank) will be responsible for vetting eligibility, and the loans will be transferred to Hong Kong Mortgage Corporate Limited (under the HK government). There will be a "principal moratorium" of six months during which only interest payments have to be made, and this can be extended from six months to one year by application to the relevant participating institution. (iii) measures to reduce salaries taxes subject to a cap of HKD 20,000 per person, and "deferment of salaries tax, personal assessment and profit tax" falling due from April to June 2020 for three months (iv) capped fee waivers of government rates for non-domestic parties, rentals and certain Companies' Registry-related fees (v) grants and one-off subsidies for an extended list of industries and businesses, e.g., aviation sector, places of entertainment and amusement	guaranteed loan capped at HKD 4 million, which is introduced under the SME Financing Guarantee Scheme (an existing scheme where the government provides varying degrees of guarantees to SMES to secure loans from participating lending institutions for the purpose of acquiring business installations and equipment or meeting working capital needs of general business uses). SMEs are small and medium enterprises with fewer than 100 persons (manufacturing) or fewer than 50 persons (non-manufacturing). Under the Special 100% Scheme, the participating institution (i.e., bank) will be responsible for vetting eligibility, and the loans will be transferred to Hong Kong Mortgage Corporate Limited (under the HK government). There will be a "principal moratorium" of six months during which only interest payments have to be made, and this can be extended from six months to one year by application to the relevant participating institution. (iii) measures to reduce salaries taxes subject to a cap of HKD 20,000 per person, and "deferment of salaries tax, personal assessment and profit tax" falling due from April to June 2020 for three months (iv) capped fee waivers of government rates for non-domestic parties, rentals and certain Companies' Registry-related fees (v) grants and one-off subsidies for an extended list of industries and businesses, e.g., aviation sector, places of entertainment and amusement
Is further reform of the insolvency regime being discussed/anticipated? If so, give details.	See above discussion on the CRP Bill to be introduced in 2021 to 2022.	See above discussion on the CRP Bill to be introduced in 2021 to 2022.	See above discussion on the CRP Bill to be introduced in 2021 to 2022.

UPDATED MAY 7, 2020

HUNGARY

HUNGARY	Bankruptcy	Liquidation
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Yes, in principle it is possible to take security over all types of assets. Taking in rem security over a specific group of assets is possible even for not yet ascertained or not yet existing assets, subject to the general principles of Hungarian collateral security law.	
What is the nature of the process?	Bankruptcy is a court process initiated by debtors, where, if the application is accepted by the court, a moratorium is granted with a view to seeking an agreement with the creditors in order to restructure the debtor's liabilities and continue its business operations.	Liquidation is a court process aimed at providing satisfaction to the creditors of an insolvent debtor by selling the debtor's assets and terminating its business operations without legal successor. Companies with sufficient assets to cover their debts are generally dissolved by voluntary winding-up proceedings. As a specific regime under liquidation, insolvent debtors may initiate the conclusion of a composition agreement to restructure the debtor's liabilities and continue its business operations.

HUNGARY

	Bankruptcy	Liquidation
What is the solvency requirement?	Act XLIX of 1991 on Bankruptcy and Liquidation Proceedings ("**Insolvency Act**") does not set a solvency requirement for bankruptcy proceedings. Debtors usually initiate bankruptcy proceedings if their assets do not foreseeably cover their liabilities when they fall due, but there is a good chance that creditors are willing to save the debtors' operations. Creditors may freely decide on the restructuring of debtors' liabilities.	The solvency requirement applied by the court depends on the legal grounds upon which liquidation is commenced. If liquidation was initiated by the court of registration or by a criminal court, then the debtor's solvency is not examined directly by the acting liquidation court. If liquidation is initiated by one of the creditors, the debtor itself, the receiver appointed for a voluntary winding-up proceeding or by the court before which an unsuccessful bankruptcy proceeding was initiated against the debtor, liquidation can be ordered based on the following cases: a) upon the debtor's failure to settle or contest its previously uncontested or acknowledged contractual debts within 20 days of the due date, and failure to satisfy such debt upon receipt of the creditor's written payment notice b) upon the debtor's failure to settle its debt within the deadline specified in a final court decision or order for payment c) if the enforcement procedure against the debtor was unsuccessful d) if the debtor did not fulfill its payment obligation as stipulated in the reorganization/composition agreement concluded in bankruptcy or liquidation proceedings e) if the court has declared the previous bankruptcy proceedings terminated f) if the debtor's liabilities in proceedings initiated by the debtor or by the receiver exceed the debtor's assets, or the debtor was unable and presumably will not be able to settle its debt (debts) on the date when they are due, and in proceedings opened by the receiver when the members (shareholders) of the debtor fail to provide a statement of commitment, following due notice, to guarantee the funds necessary to cover such debts when due
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes.	
Is restructuring of both secured and unsecured claims possible?	Yes.	Unless a composition agreement is concluded within the framework of the liquidation, there is no restructuring of claims. The aim of the procedure is to liquidate the debtor's assets.

HUNGARY

	Bankruptcy	Liquidation
Is there a classification of creditors and shareholders?	A significant division is made between creditors with or without voting rights. Generally, a voting right is granted to creditors that (i) registered their claim by the applicable deadline, (ii) paid the registration fee and (iii) have a recognized or uncontested claim. Secured and unsecured creditors constitute separate voting classes. Voting rights are weighted in certain cases, e.g., in the case of creditors over which the debtor has decisive influence.	Creditors' rights in the liquidation proceeding depend on several factors, e.g., (i) whether their claims have been reported to the liquidator (A) within the statutory deadline of 40 days or (B) only after the 40 days period but within 180 days, (ii) whether the claims are secured or not, and (iii) the priority of claims. Shareholders (having decisive influence over the debtor) generally have limited rights and additional obligations in the liquidation procedure.
Is there a requirement for voting approvals by shareholders?	Yes.	In principle, there is no vote. If liquidation is initiated by the debtor, the shareholders must vote on the application.
Is there a requirement for voting approvals by shareholders creditors?	In general, if a shareholder is also a creditor, they will vote together with other creditors.	In principle, there is no vote. If liquidation is initiated by the debtor, the shareholders must vote on the application.
Is there an ability to bind minority dissenting creditors?	Yes, the reorganization agreement applies to non-consenting creditors.	In principle, there is no vote. If a composition agreement is proposed within the framework of the liquidation, dissenting creditors may be bound by the agreement.
COMMENCING THE PROCESS		
Who can commence?	The debtor.	(1) The court of registration, (2) a criminal court, (3) the court before which an unsuccessful bankruptcy proceeding was initiated against the debtor, (4) the debtor, (5) a creditor and (6) the receiver appointed for a voluntary winding-up proceeding can all commence.
Is shareholder's consent required to commence proceeding?	Yes.	Only if the liquidation proceeding is commenced by the debtor itself.
Is there an ability to consolidate group estates?	No, bankruptcy proceedings are independent for each legal entity.	No, liquidation proceedings are independent for each legal entity.

HUNGARY

	Bankruptcy	Liquidation
Is there any court involvement?	Yes, in every phase of the proceeding. For example, the competent court decides whether a bankruptcy proceeding can be commenced or not, the court appoints the administrator and the reorganization agreement is subject to the court's approval. Furthermore, the competent court is vested with important supervisory functions.	Yes, in every phase of the proceeding. For example, the competent court decides whether a liquidation proceeding can be commenced or not, the court appoints the liquidator and also decides on the dissolution of the liquidated debtor. Furthermore, the competent court is vested with important supervisory functions.
Who manages the debtor?	The debtor is managed under the supervision of a court-appointed administrator. In general, any new commitments by the debtor must be approved by the administrator.	The debtor is managed by a court-appointed liquidator. The rights of the shareholders vis-à-vis the debtor are also limited as of the commencement of the liquidation.
What is level of disclosure of process to voting creditors?	Creditors are invited to the reorganization meeting and receive the draft reorganization agreement. When requested by the court, the creditors' committee or the creditors' representative, the administrator will give account of his/her activities and report on the financial standing of the debtor.	N/A
What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?	The Insolvency Act applies to all "economic operators" and their creditors. Economic operators are defined by the Insolvency Act as follows: business associations, public-benefit organizations, law offices, notaries' offices, patent practitioners' offices, court bailiffs' offices, European public limited liability companies, cooperative societies, housing cooperatives, European cooperative societies, water management companies (with the exception of public utility water works associations), forest management associations, voluntary mutual insurance funds, private pension funds, sole proprietorships and groupings, including European economic interest groupings, European groupings of territorial cooperation, associations, foundations established in Hungary, all other legal entities and unincorporated organizations qualified as business associations under national law, and any other organizations pursuing economic activities that have their center of main interests within the territory of the European Union according to Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings ("EUIR"), and insolvency proceedings the subject of which falls within the scope of the EUIR. Other entities, e.g., public law entities, insurance companies and financial institutions, are subject to specific insolvency regimes.	
How long does it generally take for a creditor to commence the procedure?	Generally, the court adopts a ruling on the commencement of the bankruptcy proceeding within 15 days of receipt of the debtor's application. However, a temporary moratorium is to be ordered within one business day after the court's receipt of the application.	Generally, the court adopts a ruling on the commencement of the debtor's liquidation within 60 days of receipt of the application.
EFFECT OF PROCESS		
Does debtor remain in possession with continuation of incumbent management control?	The debtor is managed under the supervision of a court-appointed administrator. In general, any new commitments by the debtor must be approved by the administrator.	The debtor is managed by a court-appointed liquidator. As of the opening of the liquidation, only the liquidator is authorized to make any legal statements in connection with the assets of the debtor.

HUNGARY

	Bankruptcy	Liquidation
What is the stay/moratorium regime (if any)?	The debtor is granted an automatic moratorium with limited exceptions (e.g., wages and similar benefits, certain taxes, and liabilities that arise due to the pre-approved continuation of business). In principle, all ongoing enforcement, foreclosure and collection activities are suspended. Contracts with the debtor cannot be terminated on the grounds that the debtor initiated a bankruptcy proceeding.	With the court ordering the debtor's liquidation, all debts and obligations of the debtor become due and payable. Claims against the debtor are to be enforced within the framework of the liquidation.
Is there a provision for debtor in possession super priority financing?	No. However, repayment of the "new money," if granted and used in line with the Insolvency Act, is not prohibited.	No.
Can procedure be used to implement debt-to-equity swap?	Yes, the reorganization agreement can be used to implement debt-to-equity swap.	No.
Are third party releases available?	In principle, third parties, e.g., co-debtors, guarantors or security providers, do not benefit from the procedure.	
Are the proceedings recognised abroad?	The proceedings are recognized by EU Member States on the basis of the EUIR. Recognition by other countries may be based on domestic conflict-of-law provisions or principles, or bi- or multi-lateral agreements.	
Has the UNCITRAL Model Law been adopted?	No.	
How long, complex and expensive is the process?	In general, the bankruptcy proceeding terminates (i) once the debtor and the creditors enter into a reorganization agreement with the court's approval, or (ii) if the reorganization agreement is not accepted and approved within the statutory deadline. When opening the procedure, the court orders a moratorium of 120 days, which may later be extended, subject to the creditor's approval, up to 240 or 365 days. The procedure is straightforward and, given that the debtor stays in possession, relatively inexpensive.	The liquidation of the debtor's assets may take several months to years, depending on the complexity of the case. Due to the often time- and resource-consuming ancillary lawsuits, the costs of the liquidation can get relatively high. Fees of the court and the liquidator have priority over the creditors' claims.

HUNGARY

	Bankruptcy	Liquidation
Is there a mandatory set-off of mutual debts on insolvency?	No. On the contrary, the provisions of the Insolvency Act limit creditors' possibilities to set off mutual debts.	In general, the provisions of the Insolvency Act limit creditors' possibilities to set off mutual debts. One significant exception is financial leasing arrangements, where, upon the termination of the contract, the market value of the leased asset returned to the lessor shall be set off against the principal and interest payment obligation of the debtor.
Can a debtor continue to carry on business during insolvency proceedings?	Yes, subject to the statutory limitations.	Yes, the liquidator may carry on business subject to the statutory limitations.

OTHER FACTORS

Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Yes, Hungarian law imposes both civil and criminal sanctions on wrongful and insolvent trading activities. However, a specific civil law wrongful trading lawsuit (section 33/A. of the Insolvency Act) is available only if a liquidation proceeding has been commenced. According to section 33/A. of the Insolvency Act, any creditor or the liquidator may bring action to establish that, in the wake of a situation carrying potential danger of insolvency, the persons who were the executives of the debtor in the span of three years before the opening of the liquidation failed to exercise their management functions in the interests of creditors. Action may also be brought against shadow directors under section 33/A. of the Insolvency Act. In wrongful trading lawsuits, the liability of directors is not limited. However, a causal link must be established between the director's wrongful act and the loss of the debtor's assets or other consequences that may hinder the creditor's full satisfaction.	
What is the order of priority of claims?	The reorganization agreement will determine the order (if any).	The order of priority of claims is as follows: (1) liquidation costs; (2) certain secured claims (not satisfied elsewhere); (3) alimony and child support payments, compensation and other benefits; (4) claims of private individuals not originating from economic activities and claims of small and micro companies and of small-scale agricultural producers; (5) debts owed to social security funds and taxes not included in liquidation costs; (6) other claims; (7) default interests and late charges, and penalties claims; and (8) claims of shareholders having decisive influence, directors and officers, and certain other related persons and entities.
Are there any pension liabilities?	Yes. In general, employers will remain responsible for the fulfilment of the pension obligations throughout bankruptcy.	Yes. The enforcement method and priority of claims depend on the nature of the underlying arrangement (i.e., whether these are statutory or contractual benefits).

HUNGARY

	Bankruptcy	Liquidation
Is it possible to challenge prior transactions?	Yes, but only on the grounds of general civil and company law provisions.	Yes, the Insolvency Act enables creditors and the liquidator to challenge prior transactions based on several legal grounds, for example: (1) transactions intended by both parties to conceal or dissipate the debtor's assets; (2) transactions without fair consideration; and (3) transactions favoring certain creditor(s).
COVID-19		
Is state support for distressed businesses available?	A debt moratorium was introduced by the Hungarian government on 18 March 2020. However, the debt moratorium does not, in principle, affect companies already under liquidation or bankruptcy proceedings. Tax relief, subsidized credit programs and regional financial state support are being launched to counter the negative economic effects of COVID-19.	
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	N/A	
Is further reform of the insolvency regime being discussed/anticipated? If so, give details.	N/A	

UPDATED MAY 7, 2020

INDONESIA

INDONESIA	Bankruptcy	Company reorganization process
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	The common forms of asset security under Indonesian law are mortgage (hak tanggungan), pledge (including pledge over shares) and fiducia security. Although working capital is not recognized as a type of secured security, Indonesian law recognizes factoring of working capital as a tool for financing.	The common forms of asset security under Indonesian law are mortgage (hak tanggungan), pledge (including pledge over shares) and fiducia security. Although working capital is not recognized as a type of secured security, Indonesian law recognizes factoring of working capital as a tool for financing.
What is the nature of the process?	Law No. 37 of 2004 dated 18 October 2004 on Bankruptcy and Suspension of Payment ("**Bankruptcy Law**") governs the bankruptcy and suspension of payment proceedings. A debtor that has more than one creditor and that has failed to pay one of its debts in full, which is already due and payable, can be declared bankrupt by the commercial court. After the court declares the debtor bankrupt, the debtor loses its capacity to manage and dispose of the bankruptcy estate. Further, all court enforcement procedures relating to security or otherwise are postponed and any attachment order is lifted. The power to undertake any legal action in respect of the bankruptcy estate passes to the receiver. The bankruptcy estate consists of all the bankrupt debtor's assets at the time of the bankruptcy declaration. After the debtor is declared bankrupt, the bankruptcy status can be lifted if the creditors can agree a composition plan.	A creditor that foresees that its debtor would not be able to continue to pay its debts when they become due and payable, and a debtor that is unable or predicts that it would be unable to pay its debts when they become due and payable, may file a petition for the suspension of payment of debts with the relevant commercial court. The aim of suspension of payments proceedings is to prevent the debtor from going bankrupt when there is a possibility that it may be able to pay the debt in the near future. Thus, suspension of payments proceedings provide the debtor with more time to either meet its debt obligations or come to an agreement with its creditors to restructure the debt by preparing a composition plan for the creditor, which will be sanctioned under a court decision. Please note that a suspension of payment can be converted into a bankruptcy when it is clear that the suspension will not be successful.

INDONESIA

	Bankruptcy	Company reorganization process
What is the solvency requirement?	There is no solvency requirement, as it is a term used in other jurisdictions and not in Indonesia. However, to be declared bankrupt, a debtor must have more than one creditor and has failed to pay at least one of its debts in full, which is already due and payable.	There is no solvency requirement, as it is a term used in other jurisdictions and not in Indonesia. A creditor that foresees that its debtor would not be able to continue to pay its debts when they become due and payable, and a debtor that is unable or predicts that it would be unable to pay its debts when they become due and payable, may file a petition for the suspension of payment of debts.
Is there a requirement to demonstrate COMI ("centre of main interests")?	Indonesia does not have the concept of COMI, as Indonesian courts, in general, view themselves as having no jurisdiction over companies located outside of Indonesia.	Indonesia does not have the concept of COMI, as Indonesian courts, in general, view themselves as having no jurisdiction over companies located outside of Indonesia.
Is restructuring of both secured and unsecured claims possible?	Yes, based on the approval of the creditors.	Yes, based on the approval of the creditors.
Is there a classification of creditors and shareholders?	The general classifications of creditors are secured and unsecured creditors.	The general classifications of creditors are secured and unsecured creditors.
Is there a requirement for voting approvals by shareholders?	If the debtor is a company, shareholder approval is required to submit a petition for (voluntary) bankruptcy. Approval from the shareholders of the debtor, however, is not required for voting conducted in the proceeding.	If the debtor is a company, shareholder approval is required to submit a petition for the (voluntary) suspension of payment. Approval from the shareholders of the debtor, however, is not required for voting conducted in the proceeding.
Is there a requirement for voting approvals by shareholders' creditors?	Generally, there is no law that requires voting approvals by the shareholders' creditors, unless the creditors' articles of association determine that there is.	Generally, there is no law that requires voting approvals by the shareholders' creditors, unless the creditors' articles of association determine that there is.
Is there an ability to bind minority dissenting creditors?	Yes. All creditors are bound by the bankruptcy process and decision.	Yes. If the composition plan on the suspension of payment is approved, it is binding on all creditors. Dissenting secured creditors, however, have the option not to be bound by the composition plan if they choose to enforce the security they hold.

INDONESIA

	Bankruptcy	Company reorganization process
COMMENCING THE PROCESS		
Who can commence?	Under the Bankruptcy Law, a debtor that has more than one creditor and that has failed to pay one of its debts in full, which is already due and payable, can be declared bankrupt by the commercial court upon petition of: • the debtor itself (in the case of voluntary bankruptcy) • any of its creditors, whether domestic or foreign • Bank Indonesia (the Indonesian Central Bank) (if the debtor is a bank) or Otoritas Jasa Keuangan or OJK (the Financial Services Authority) (if the debtor is a securities company, a stock exchange, a clearing and guarantee agency, or a depositary and settlement agency) • the public prosecutor (if the bankruptcy petition involves public interest) • the minister of finance (if the bankruptcy petition is against an • insurance company, a reinsurance company, a pension fund or a state-owned company in the form of a persero)	Under the Bankruptcy Law, a debtor that has more than one creditor and that has failed to pay one of its debts in full, which is already due and payable, can be granted a suspension of payment upon petition of: • the debtor itself (in the case of voluntary suspension of payment) • any of its unsecured creditors, whether domestic or foreign • Bank Indonesia (the Indonesian Central Bank) (if the debtor is a bank) or Otoritas Jasa Keuangan or OJK (the Financial Services Authority) (if the debtor is a securities company, a stock exchange, a clearing and guarantee agency, or a depositary and settlement agency) • the public prosecutor (if the suspension of payment petition involves public interest) • The minister of finance (if the suspension of payment petition is against an insurance company, a reinsurance company, a pension fund or a state-owned company in the form of a persero) Please note that a debtor may also file a petition for the suspension of payment after a petition for bankruptcy declaration has been filed against it.
Is shareholders' consent required to commence proceedings?	Yes. If the debtor is a company, shareholder approval is required to submit a voluntary petition for bankruptcy and, in turn, commence bankruptcy proceedings.	Yes. If the debtor is a company, shareholder approval is required to submit a voluntary petition for the suspension of payment and, in turn, approve a composition plan.
Is there an ability to consolidate group estates?	Technically, no.	Technically, no. However, it is possible for the terms of the approved composition plan to include the involvement of other entities in the group, e.g., as third-party guarantors, guaranteeing the obligation in the composition plan.
Is there any court involvement?	Yes.	Yes.
Who manages the debtor?	After the court declares the debtor bankrupt, the debtor loses its capacity to manage and dispose of the bankruptcy estate, and the power to undertake any legal action in respect of the bankruptcy estate passes to the receiver.	In suspension of payment proceedings, the board of directors can still conduct general day-to-day business activities so long as it does not negatively affect the bankruptcy estate, but the business activities are subject to approval from the administrator and supervisory judge.

INDONESIA

	Bankruptcy	Company reorganization process
What is the level of disclosure of the process to voting creditors?	A bankruptcy decision must be announced no later than five days after the court's bankruptcy declaration in the State Gazette and at least two daily newspapers, as determined by the supervisory judge. Information on the progress of proceedings (such as the list of creditors, hearing schedules and total outstanding obligations) can also be accessed at the relevant court.	Much like the announcement requirements in a bankruptcy process, a suspension of payment process must also be announced in the State Gazette and at least two daily newspapers, as determined by the supervisory judge. Information on the progress of proceedings (such as the list of creditors, hearing schedules and total outstanding obligations) can also be accessed at the relevant court.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Generally, either the debtor or the creditor submits a bankruptcy petition. However, the Bankruptcy Law provides a number of exceptions. A bankruptcy petition is submitted by: • Bank Indonesia (the Indonesian Central Bank) if the debtor is a bank • Otoritas Jasa Keuangan or OJK (the Financial Services Authority) if the debtor is a securities company, a stock exchange, a clearing and guarantee agency, or a depositary and settlement agency • the public prosecutor if the bankruptcy petition involves public interest • the minister of finance if the bankruptcy petition is against an insurance company, a reinsurance company, a pension fund or a state-owned company in the form of a persero	Generally, either the debtor or an unsecured creditor submits a petition for a suspension of payment. However, the Bankruptcy Law provides a number of exceptions. A bankruptcy petition is submitted by: • Bank Indonesia (the Indonesian Central Bank) if the debtor is a bank • Otoritas Jasa Keuangan or OJK (the Financial Services Authority) if the debtor is a securities company, a stock exchange, a clearing and guarantee agency, or a depositary and settlement agency • the public prosecutor if the bankruptcy petition involves public interest • the minister of finance if the bankruptcy petition is against an insurance company, a reinsurance company, a pension fund or a state-owned company in the form of a persero
How long does it generally take for a creditor to commence the procedure?	This depends on the circumstances. However, after the bankruptcy petition has been filed against the debtor, the Bankruptcy Law provides that the commercial court must render a decision within 60 days after the date the petition is registered.	This depends on the circumstances. However, the Bankruptcy Law provides that if a creditor submits a suspension of payment petition, the court must issue a temporary suspension of payment order within 20 days after the filing, whereas if the debtor submits it, the court is required to issue a temporary suspension of payment order within three days of that filing. The suspension of payment process commences after the issuance of a temporary suspension of payment court order.

INDONESIA

	Bankruptcy	Company reorganization process
EFFECT OF PROCESS		
Does the debtor remain in possession with the continuation of incumbent management control?	No. After a bankruptcy decision, the debtor will lose its power to manage and dispose of its assets.	Yes. In a suspension of payment process, the debtor may conduct its business as usual but it is subject to approval from the administrator and supervisory judge.
What is the stay/moratorium regime (if any)?	In a bankruptcy process, the secured creditors' right to enforce the security is stayed for a maximum of 90 days from the date the debtor is declared bankrupt. Following the stay period, the secured creditors would be able to enforce the security in accordance with its terms and conditions.	Under the Bankruptcy Law, there is a stay of enforcement against the debtor during a suspension of payment process, during which the secured creditors are prevented from enforcing their rights over the collateral. The stay period is essentially established for the purpose of, among others, increasing the possibility of achieving a settlement or increasing the possibility of optimizing the bankruptcy estate.
Is there a provision for debtor-in-possession super priority financing?	There is no specific provision on this matter. However, after a bankruptcy declaration, it is still possible for the debtor to obtain super priority financing if the receivers find that it is in the best interests of the bankruptcy process.	In a suspension of payment, the debtor may obtain additional financing and even provide security from its unsecured assets, as long as it obtains approval from the administrator and supervisory judge.
Can the procedure be used to implement a debt-to-equity swap?	There is no specific provision/restriction on this matter. After a bankruptcy declaration, it is the discretion of the receivers with certain approvals to determine whether such procedure is possible.	Yes, depending on the terms of the agreed composition plan.
Are third-party releases available?	There is no specific provision/restriction on this matter. After a bankruptcy declaration, it is the discretion of the receivers to determine whether such release can be granted.	Generally no, unless specifically agreed in the composition plan (e.g., release of third-party security providers/guarantors).
Are the proceedings recognized abroad?	This would depend on where recognition is sought.	This would depend on where recognition is sought.
Has the UNCITRAL Model Law been adopted?	No.	No.
How long, complex and expensive is the process?	The complexity and expense of the process depends on various factors, such as the number of creditors and assets involved.	The complexity and how expensive the process is depend on various factors, such as the number of creditors and assets involved.

INDONESIA

	Bankruptcy	Company reorganization process
Is there a mandatory set-off of mutual debts on insolvency?	Set-off of mutual debts has to be requested.	Set-off of mutual debts has to be requested.
Can a debtor continue to carry on business during insolvency proceedings?	After a bankruptcy decision, the debtor can only continue business under the direction of the receivers. The debtor will lose its authority to manage and dispose of its assets.	Generally, yes. In a suspension of payments process, the debtor may continue to conduct business as long as it obtains approval from the administrator and/or supervisory judge. The debtor is given temporary relief to reorganize its debts and continue in business, and ultimately satisfy its creditors.
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Law No. 40 of 2007 on Limited Liability Companies ("Company Law") provides that if a bankruptcy of a company is due to the fault or negligence of its directors, and the assets of the company are insufficient to pay all its obligations, the directors will be liable to pay the outstanding amount. After a bankruptcy declaration, the debtor will lose its power to manage and dispose of its assets. If the director(s) of the debtor conduct trading without the approval of the receivers, they may be held personally liable.	The Company Law provides that the directors of a company are personally liable for company losses if the losses are due to their fault or negligence in performing their duties. In a suspension of payment process, the debtor may continue to conduct business as long as it obtains approval from the administrator and/or supervising judge. As such, if the director(s) conduct any wrongful trading before, during or after the suspension of payment process, they may be held personally liable.

INDONESIA

	Bankruptcy	Company reorganization process
What is the order of priority of claims?	The ranking of claims in a debtor's bankruptcy is regulated by several pieces of legislation. The order of priority is as follows: • Employee or worker's salary. • Tax claims — claims for unpaid tax only have priority for five years from the date the tax was incurred. • Bankruptcy estate creditors — this includes: – the receiver's fee – costs of the bankruptcy proceedings – post-bankruptcy financing – lease of the bankrupt debtor's house or offices • Secured creditors — these are creditors with the benefit of a security interest over some or all of the assets of the debtor. • Other employee or worker's rights — the employees who may have a claim arising from their termination of employment relationships under labor law (excluding wages), i.e., (i) severance payment, (ii) long service payment, and (iii) other compensation of rights • Unsecured creditors — these include specific statutorily preferred creditors whose preference relates only to specific assets, general statutory priority rights and non-preferred unsecured creditors. • Shareholders — any surplus goes to the shareholders according to the rights attached to their shares. A constitutional court decision1 further clarifies the ranking of employee wages claims as follows: • Employee wages have priority over all types of claims, including tax claims and claims from secured creditors. • Other types of employee claims, i.e., (i) severance payment, (ii) long service payment, and (iii) other compensation of rights, are prioritized after the claims from secured creditors.	This depends on the terms of the composition plan.

1 Constitutional Court Decision No. 67/PUU-XI/2013.

INDONESIA

	Bankruptcy	Company reorganization process
Are there any pension liabilities?	No. However, employees are entitled to other types of claims, i.e., severance payment, long service payment and other compensation of rights.	No. However, if the suspension of payment results in the termination of employment, in addition to a claim payment of their due wages, employees are entitled to other types of claims, i.e., severance payment, long service payment and other compensation of rights.
Is it possible to challenge prior transactions?	Indonesia recognizes certain clawback procedures for any action by the debtor that prejudices its creditors' interests. The concept of actio pauliana is recognized in the Bankruptcy Law and the Indonesian Civil Code. The Bankruptcy law provides that, unless proven otherwise, there is a legal presumption of deemed knowledge of prejudice of other creditors if the action was performed within a period of one year prior to the bankruptcy decision and such action: • constitutes an agreement under which the obligations of the debtor were more onerous than the obligations of the counterparty • constitutes the payment of or granting of security for existing debts that were not due and payable • was performed with an affiliated party (which is described extensively in the Bankruptcy Law)	Indonesia recognizes certain clawback procedures for any action by the debtor that prejudices its creditors' interest. The concept of actio pauliana is recognized in the Bankruptcy Law and the Indonesian Civil Code. However, in a suspension of payment process, the clawback procedures are applicable upon the default of the debtor or failure of the suspension of payment process, resulting in a bankruptcy declaration. The Bankruptcy Law provides that, unless proven otherwise, there is a legal presumption of deemed knowledge of prejudice of other creditors if the action was performed within a period of one year prior to the bankruptcy decision and such action: • constitutes an agreement under which the obligations of the debtor were more onerous than the obligations of the counterparty • constitutes the payment of or granting of security for existing debts that were not due and payable • was performed with an affiliated party (which is described extensively in the Bankruptcy Law)

INDONESIA

	Bankruptcy	Company reorganization process
COVID-19		
Is state support for distressed businesses available?	The government recently issued Government Regulation in Lieu of Law No. 1 of 2020 on Policies on State Finance and Financial System Stability for the Mitigation of the Coronavirus Disease 2019 (COVID-19) Pandemic and/or for the Purpose of Handling the Threats that are Potentially Harmful to the National Economy and/or Financial System Stability ("**COVID-19 Mitigation Regulation**"), which gives the government the authority to implement national economy recovery programs. The recovery programs under the COVID-19 Mitigation Regulation may include support to distressed businesses. However, the programs will be further elaborated on in an implementing regulation. It remains to be seen how this will be implemented until the implementing regulation is issued. The Coordinating Ministry for Economic Affairs recently announced that the government will provide support to micro, small and medium enterprises affected by the COVID-19 outbreak by, among others things, waiving the interest and providing a grace period for the payment of the principal of certain working capital loans for a maximum period of six months.	The government recently issued the COVID-19 Mitigation Regulation, which gives the government the authority to implement national economy recovery programs. The recovery programs under the COVID-19 Mitigation Regulation may include support to distressed businesses. However, the programs will be further elaborated on in an implementing regulation. It remains to be seen how this will be implemented until the implementing regulation is issued. The Coordinating Ministry for Economic Affairs recently announced that the government will provide support to micro, small and medium enterprises affected by the COVID-19 outbreak by, among others things, waiving the interest and providing a grace period for the payment of the principal of certain working capital loans for a maximum period of six months.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	Other than the above, we are not aware of any dispensations or amendments (such as restrictions on creditor actions) in light of the COVID-19 outbreak.	Other than the above, we are not aware of any dispensations or amendments (such as restrictions on creditor actions) in light of the COVID-19 outbreak.
Is further reform of the insolvency regime being discussed/anticipated? If so, give details	We are not aware of any reform of the insolvency regime.	We are not aware of any reform of the insolvency regime.

UPDATED MAY 5, 2020

ITALY

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ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
INITIAL CONSIDERATIONS				
Can you take security over all types of assets, including working capital?	It is possible to take security over most types of assets, including inventory, by way of a special banking lien under Section 46 of the Banking Law. This is only available to banks and only for medium or long-term financing of businesses. Apart from the special lien, security can be created on receivables and bank accounts, whereas security on equipment requires an appointment of a custodian, which, in the context of an operating plant, is a problem as it is, for the same reason, security on inventory (i.e., it would require segregation).			
What is the nature of the process?	Court process leading to: (1) an order of the bankruptcy court; or (2) a settlement ("**In-Bankruptcy Composition**" or "**Composition**"). In-Bankruptcy Compositions aim to speed up the bankruptcy process by allowing the debtor, any creditor or third party to acquire the assets and liabilities of the bankrupt's estate.	Court process by which the debtor discharges its debts and avoids bankruptcy. The debtor submits a plan that may provide for: (1) sale of the business; (2) restructuring of existing debts; or (3) discharge of existing debts on terms set out in the plan. The plan must grant the payment of at least 20% of the unsecured creditors' claims. This provision does not apply to creditor proposals (Concordato) that contemplate business continuation. The debtor can apply to convert the process into a debt restructuring arrangement at any time.	**Debt restructuring arrangement** Court process by which a pre-packaged restructuring arrangement or plan is sanctioned and made binding upon all creditors. Arrangement may involve the sale of the business (subject to court approval). **Turnaround plan** An out-of-court process by which a debtor's debts are restructured.	Court process comprised of: (1) declaration of state of insolvency; and (2) either: (a) commencement of extraordinary administration; or (b) adjudication in bankruptcy. Aimed at restructuring large insolvent companies, and maintaining the debtor as a going-concern, to protect the business and its employees, but may end in liquidation. Shortened proceedings are possible in circumstances where creditors accept a settlement proposal (Marzano proceedings). If a Marzano proposal fails, the process may be converted into bankruptcy.

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
What is the solvency requirement?	Available for insolvent entities.	Debtor must be in "a state of crisis" (suffering from illiquidity). State of crisis means a potential (but still not actual) insolvency. Insolvency (the incapacity to regularly perform obligations) can be temporary (if due to specific, incidental reasons) or long-term (if it lasts for a long time and it is due to structural reasons).	**Debt restructuring arrangement** Available where debtor is in a "state of crisis" but has sufficient assets to pay dissenting creditors in full. **Turnaround plan** Available where debtor is in a temporary "state of crisis" (e.g., short-term cash-flow insolvency). Note: The debtor is also entitled to obtain urgent interim finance necessary to operate in the usual course of business without having to file a certification issued by an independent expert. A request is made to the court with a decision provided no later than 10 days from filing after having heard the opinion of the judicial commissioner and, if necessary, the main creditors. The debtor must specify the purpose of the interim finance and declare that: (1) there are no alternative sources of financing; and (2) failure to obtain such financing would cause imminent and irreparable harm to its business. Any claim by the lender will have priority over the existing creditors' in the case of bankruptcy (prededucibili).	Available where debtor is suffering short-term liquidity issues but where financial position may be resolved through: (1) the sale of its assets or undertaking; or (2) through a restructuring plan.

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes.	Yes.	Yes.	Yes.
Is restructuring of both secured and unsecured claims possible?	**Bankruptcy procedure:** No. **In-bankruptcy procedure :** Yes. Proposal may provide for write-down of secured creditors' claims but claims must not be written down to less than the best achievable value of security. The value that can be reached over a security depends on the amount of proceeds of the sale and on the type and degree of security, but there is not a strictly best achievable security in general. Regarding the nature of the privilege and degree of security, mortgage is, in theory, the best security.	No. However, unsecured creditors' claims may be restructured provided the majority in value of the unsecured creditors (or, if divided into classes, the majority in value of the creditors in a class) approve.	Yes. Subject to approval of 60% in value of secured and unsecured creditors. Note: Claims of dissenting creditors (secured and unsecured) must be satisfied in full.	**Liquidation:** N/A **Composition:** Yes
Is there a classification of creditors and shareholders?	**Liquidation:** N/A **In-bankruptcy petition:** Yes. Unsecured creditors and secured creditors that have waived their right to security may vote. Those with security or any conflict of interest may not vote.	Yes. Unsecured creditors (including any secured creditor for a portion of any unpaid secured claim) may be divided into classes for voting purposes. Commonly, creditors are classed as follows: (1) banks; (2) suppliers; and (3) intercompany creditors.	No.	**Liquidation:** N/A **Composition:** Yes. Creditors' claims are classed according to "economic interest," commonly in the following classes: (1) banks; (2) suppliers; and (3) intercompany creditors.
Is there a requirement for voting approvals by shareholders?	No.	No.	No.	**Liquidation:** No. **Composition:** No.

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
Is there a requirement for voting approvals by shareholders creditors?	**Liquidation:** N/A. **In-Bankruptcy Composition:** Approval requires: (1) a simple majority in value of unsecured creditors; and (2) a majority in number of creditor classes. Secured creditors are only entitled to vote to the extent their claim is unsecured.	Approval requires: (1) a simple majority in value of unsecured creditors; (2) a majority in number of creditor classes; and (3) all those eligible to vote having expressly done so. Note: Secured creditors are only entitled to vote to the extent their claim is unsecured.	**Debt restructuring arrangement:** Approval requires: (1) 60% in value of all creditors (secured and unsecured); and (2) a majority in number of creditor classes (if applicable). An independent expert must certify the debt restructuring arrangement is feasible and that dissenting creditors will be paid in full. **Turnaround plan:** Approval requires each creditor to consent to the respective turnaround plan.	**Liquidation:** The Ministry of Ecomomic Development must approve the liquidation or restructuring. A majority in value of creditors (secured and unsecured) must approve the liquidation or restructuring. Any dissenting creditor may petition the court to challenge its treatment under the plan. **Marzano proceedings:** A majority in value of creditors (secured and unsecured) must approve any settlement proposal put forward by the commissioner or a third party (e.g., investors). Composition: Approval requires: (1) a simple majority in value of the creditors (both secured and unsecured); and (2) a majority in number of classes (if applicable).

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
Is there an ability to bind minority dissenting creditors?	**Liquidation:** N/A **In-Bankruptcy Composition:** Yes. Dissenting creditors are bound if required creditor approvals are obtained.	Yes. The bankruptcy court can confirm a pre-bankruptcy composition as long as: (1) no more than 20% of creditors in a particular class dissent the debtor's proposal; and (2) the court is satisfied creditors would not receive better treatment under alternative proceedings (e.g., bankruptcy). Note: Creditors representing at least 10% of the value of all creditors can make an application to the court for alternative proceedings. This cannot be done if the independent expert attests that the debtor's proposal grants the payment of at least 40% of unsecured creditors (or 30% in case of a business continuity composition, in which there is continuation of the business by the debtor or by a third party or the sale of the business as a going concern). Note: Creditors representing at least 20% of the value of all secured creditors that are not paid in full may challenge the pre-bankruptcy composition even if approved by the required majority.	**Debt restructuring arrangement:** No. Except in circumstances involving banks or financial intermediaries, dissenting creditors are not bound and must be paid in full. **Turnaround plan:** No.	**Liquidation:** N/A **Composition:** Yes. Dissenting creditors are bound if required creditor approvals are obtained.
COMMENCING THE PROCESS				
Who can commence?	(1) debtor; (2) any creditor(s); or (3) the public prosecutor	(1) debtor	(1) debtor	**Prodi-bis proceedings:** (1) debtor; (2) any creditor(s); or (3) the public Prosecutor **Marzano proceedings:** (1) debtor Both Marzano and Prodi-bis proceedings are extraordinary administration proceedings.

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
Is shareholder's consent required to commence proceeding?	No.	No, unless: (1) a reduction of capital; or (2) a debt-to-equity swap is proposed.	No, unless: (1) a reduction of capital; or (2) a debt-to-equity swap is proposed.	No.
Is there an ability to consolidate group estates?	No.	No.	No.	**Marzano proceedings:** Yes.
Is there any court involvement?	Limited court involvement. The process is supervised by the court.	Limited court involvement. The process is supervised by the court, which also confirms the pre-bankruptcy composition.	Limited court involvement. **Debt restructuring arrangement:** The debt restructuring arrangement must be approved by the court. **Turnaround plan:** N/A	Heightened court involvement. The court and the Ministry of Economic Development supervise the process.
Who manages the debtor?	The bankruptcy receiver (appointed by the bankruptcy court).	Debtor's management retains its powers under the supervision of the judicial commissioner (later a judicial liquidator) appointed by the bankruptcy court.	Debtor's management retains its powers.	Debtor's management retains its powers in certain circumstances (e.g., when the debtor can resolve its insolvency issues through a restructuring). Where this is not possible, the bankruptcy court will appoint three extraordinary commissioners.
What is level of disclosure of process to voting creditors?	**Liquidation:** N/A **In-Bankruptcy Composition:** Information is provided to creditors to ensure voting on proposals is made on an informed basis.	A pre-bankruptcy petition must contain an independent expert's opinion confirming the feasibility of the plan and accounting data.	Debt restructuring arrangement and turnaround plans contain an independent expert's opinion confirming the feasibility of the plan.	An extraordinary administration petition to the court must contain financial and company information. If a proposed settlement is put forward by a third party and does not provide for payment of secured creditors in full, evidence of the market value of security must be submitted (and the corresponding write-down of security).

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?	Insurance companies, credit institutions, cooperative companies (società cooperative), trusts and auditing companies, cooperative consortia (consorzi di cooperative) granting public contracts, mandatory consortia (consorzi obbligatori), farmers, state entities and small businesses. Small businesses are those that: • have had, in each of the three fiscal years before the date of filing of the petition for bankruptcy or, if fewer, from the beginning of the business's activity, net equity not exceeding EUR 300,000 • have realized, in each of the three fiscal years before the date of the filing of the petition for bankruptcy or from the beginning of the activity (if fewer), gross revenues not exceeding EUR 200,000 • owe debts, even if not yet due upon adjudication, not exceeding EUR 500,000 The legislation to be applied depends on the industry and nature of the debtor.			
How long does it generally take for a creditor to commence the procedure?	Generally takes a few weeks/ months, depending on the competent court.	Generally takes a few weeks/ months, depending on the competent court.	Generally takes a few weeks/ months, depending on the competent court.	N/A

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
EFFECT OF PROCESS				
Does debtor remain in possession with continuation of incumbent management control?	No. Management powers' cease.	Yes, under the supervision of the judicial commissioner and delegated judge.	Yes, in both a debt restructuring arrangement and a turnaround plan, the debtor remains in possession.	In certain circumstances, the debtor remains in possession (e.g., when the debtor may resolve its insolvency issues through a restructuring program). However, where this is not possible, the judicial commissioners and the court will manage and control the debtor and the proceedings.
What is the stay/moratorium regime (if any)?	Automatic stay upon adjudication that prevents enforcement of security. Creditors cannot file or continue proceedings.	Automatic stay upon the publication of the filing request in the Companies Register that prevents enforcement of security. Creditors are unable to file or continue proceedings.	**Debt restructuring arrangement:** No automatic stay but the debtor may request a stay. If requested, a stay prevents the enforcement of security. Creditors are unable to file or continue proceedings. **Turnaround plan:** No automatic stay.	Automatic stay takes effect upon the filing of the extraordinary administration petition that prevents the enforcement of security. Creditors are unable to file or continue proceedings.
Is there a provision for debtor in possession super priority financing?	N/A	Yes, subject to approval from the bankruptcy court and an independent expert certifying that the new financing is for the benefit of the creditors (as a whole). **Priority:** 100% super-priority for "new money" as an "expense of the procedure." This funding is protected from the risk of clawback from the date of the composition.	**Debt restructuring arrangement:** Yes, subject to approval from the bankruptcy court and an independent expert certifying that the new financing is for the benefit of the creditors (as a whole). **Priority:** 100% super-priority for "new money" (not frequently used). **Turnaround plan:** N/A	**Liquidation:** N/A **Composition:** Yes, subject to approval from the bankruptcy court. **Priority:** 100% super-priority for "new money" (relatively frequently used).

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
Can procedure be used to implement debt-to-equity swap?	**Liquidation:** N/A **In-Bankruptcy Composition:** Yes, in accordance with the terms of the plan.	Yes, in accordance with the terms of the plan.	Yes, in accordance with the terms of the plan.	Yes, in accordance with the terms of the plan.
Are third party releases available?	**Liquidation:** N/A **In-Bankruptcy Composition:** Yes, in accordance with the terms of the plan.	Yes, in accordance with the terms of the plan.	Yes, in accordance with the terms of the plan. Note: Creditors that do not vote in favor of the plan will not be bound by third-party releases.	Yes, in accordance with the terms of the plan.
Are the proceedings recognised abroad?	For judgments rendered abroad concerning restructuring/insolvency proceedings, the competent court of appeal must verify the contents and recognize • the judgment, subject to verification that: • the defendant knew of the existence of such proceedings • the defendant could participate in or object to such proceedings • the judgment was rendered in accordance with the laws of the foreign country • the judgment does not violate any Italian public order law • no proceedings are pending before an Italian court in relation to the same matter			
Has the UNCITRAL Model Law been adopted?	No.	No.	No.	No.

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
How long, complex and expensive is the process?	The timing of the process varies but the receiver must complete the liquidation of the assets within two years of the judgment declaring bankruptcy, unless the receiver deems it necessary to ask for a longer term. Involves input from technical experts/consultants etc., appointed by the bankruptcy court and creditors' committee involvement, which can be expensive.	The bankruptcy court's decrees must be issued within nine months of submission of the pre-bankruptcy composition (although the bankruptcy court may grant the debtor a 60-day extension). Involves input from technical experts/consultants etc., appointed by the bankruptcy court and creditors' committee involvement, which can be expensive.	Timing of the process varies and depends upon negotiations with creditors. Does not involve the bankruptcy court and is generally less expensive.	If part of a liquidation, usually less than one year; and, if part of a restructuring, usually less than two years. The Ministry of Economic Development may grant a 12-month extension. The process may be shortened in Marzano proceedings if creditors accept a settlement proposal. Generally expensive given it is restricted to large companies.
Is there a mandatory set-off of mutual debts on insolvency?	No.	No.	No.	No.
Can a debtor continue to carry on business during insolvency proceedings?	No.	Yes, depending on the type of pre-bankruptcy composition.	Yes.	No.

OTHER FACTORS

Are there any wrongful or insolvent trading restrictions and what is the directors' liability?

Yes. Wrongful and/or insolvent trading restrictions apply.

Who can be liable: Directors, general managers, liquidators, statutory auditors (including advisers) and/or lenders (as shadow directors).

Civil liability: Any delay by directors to request the debtor's admission to bankruptcy may be construed as mismanagement.

Criminal liability:

(1) Any director who delays the filing of a petition for bankruptcy commits the crime of "simple bankruptcy" if the delay worsened the debtor's distress. This will result in a fin.

(2) Any director who undertakes "negligent transactions" with the purpose of delaying the declaration of bankruptcy (e.g., the sale of stock below market price).

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
What is the order of priority of claims?	**Order of distribution** The order of the distribution of proceeds from the sale of assets is complicated taking into account the existence of a diverse range of preferences. In general: **post-adjudication claims**, i.e., claims created after the adjudication that have precedence over all other claims (crediti prededucibili). **preferred/secured creditors**, ranking differs based on the type of assets and security/preference.	The same rules that apply in bankruptcy also apply if the distribution is lower than what is contemplated in the composition plan, mutatis mutandis. Additionally, liabilities arising from the performance of "urgent acts" during the process, which are authorized by the bankruptcy court, are ranked above post-adjudication claims.	N/A Note that in an ensuing bankruptcy procedure new finance authorized by the bankruptcy court is granted first ranking priority. Priority is also granted to claims arising out of the implementation of the plan, provided that such claims were contemplated in the petition and authorized by the bankruptcy court.	Additionally, debts incurred in the continuation of the business will generally have priority over any other secured and unsecured claims.
Are there any pension liabilities?	The debtor has no pension liabilities towards its employees — in relation to both statutory and contractual pension entitlements. An employee will receive their full statutory pension entitlement from the Italian social security body (Istituto Nazionale della Previdenza Sociale (INPS)) even if the employer fails to pay mandatory social contributions. Where payments are made by an employer to a private pension fund, insolvency of the debtor may result in the employee: (1) receiving only a portion of their additional pension entitlement (if sufficient contributions have been paid); or (2) not receiving any additional entitlement (if contributions have been insufficient). Generally, pension funds will return contributions that have been deducted from their payroll to the employee. Note: The INPS and the private pension fund is entitled to file a claim against the insolvent employer for any contributions it has failed to make and such claims are granted preferential treatment.			

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
Is it possible to challenge prior transactions?	**Relevant period:** Between six months and two years depending on the nature of the transaction in question. For example: (1) deeds executed by the debtor for no consideration may be set aside if created within two years prior to the declaration of bankruptcy (2) guarantees and security granted by the debtor in respect of pre-existing debts that had not yet fallen due may be set aside if created within one year prior to the declaration of bankruptcy (3) guarantees and security granted by the debtor in respect of debts that have fallen due may be set aside if created within six months prior to the declaration of bankruptcy **Requirements:** Preferential payments/transactions made to the prejudice of other creditors. **Exceptions:** There are various exceptions including: (1) payments made or security granted in accordance with the terms of a restructuring plan; or (2) payments made in order to obtain services to allow the debtor to access other insolvency procedures.	N/A	**Debt restructuring:** **Relevant period:** Between six months and two years depending on the nature of the transaction in question. For example: (1) deeds executed by the debtor for no consideration may be set aside if created within two years prior to the declaration of bankruptcy (2) guarantees and security granted by the debtor in respect of pre-existing debts that had not yet fallen due may be set aside if created within one year prior to the declaration of bankruptcy (3) guarantees and security granted by the debtor in respect of debts that have fallen due may be set aside if created within six months prior to the declaration of bankruptcy **Requirements:** Preferential payments/transactions made to the prejudice of other creditors. **Exceptions:** There are various exceptions including: (1) payments made or security granted in accordance with the terms of a restructuring plan; or (2) payments made in order to obtain services to allow the debtor to access other insolvency procedures. **Turnaround plans:** N/A	**Relevant period:** Between six months and two years depending on the nature of the transaction in question. For example: (1) deeds executed by the debtor for no consideration may be set aside if created within two years prior to the declaration of bankruptcy (2) guarantees and security granted by the debtor in respect of pre-existing debts that had not yet fallen due may be set aside if created within one year prior to the declaration of bankruptcy (3) guarantees and security granted by the debtor in respect of debts that have fallen due may be set aside if created within six months prior to the declaration of bankruptcy **Requirements:** Preferential payments/transactions made to the prejudice of other creditors. **Exceptions:** There are various exceptions including: (1) payments made or security granted in accordance with the terms of a restructuring plan; or (2) payments made in order to obtain services to allow the debtor to access other insolvency procedures.

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
COVID-19				
Is state support for distressed businesses available?	As a consequence of the COVID-19 emergency, the Italian Government has introduced, among others, the following measures to support businesses: • Measures to help micro-enterprises and SMEs to repay their financial indebtedness vis-à-vis (i) banks, (ii) financial intermediaries; and (iii) other entities authorized to grant loans in Italy, due to the epidemiological emergency created by COVID-19. • Possibility for lenders to seek access to the state guarantee (Fondo centrale di garanzia PMI (Central Guarantee Fund for SMEs),—"Fund") for losses related to the above. • Additional measures in order to support companies affected by the COVID-19 pandemic and particularly to ensure the necessary liquidity for companies with registered office in Italy affected by the COVID-19 pandemic, namely: ▸ SACE S.p.A. (i.e., the Italian Export Credit Agency, a joint stock company controlled by Cassa Depositi e Prestiti S.p.A.) on behalf of the Italian State, will grant, until 31 December 2020, guarantees up to a maximum amount of EUR 200 billion (out of which at least EUR 30 billion are intended to support small and medium-sized enterprises) in favor of banks, national and international financial institutions and other entities entitled to grant loans in Italy ("SACE Guarantee"). Such a guarantee is counter-guaranteed by the Italian State with a first demand guarantee (without recourse). ▸ The SACE Guarantee is a first demand and irrevocable guarantee that will guarantee, save for certain exceptions, loans granted to the companies for capital, interests and ancillary charges. ▸ The effectiveness of the SACE Guarantee is subject to the approval of the European Commission, pursuant to Article 108 of the Treaty on the Functioning of the European Union.			
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	According to Law Decree No. 23/2020 any request for bankruptcy filed by a creditor from 9 March to 30 June 2020 is not admissible. Only the applications filed by the public prosecutor to obtain precautionary or conservative measures to protect the assets or the business are deemed admissible.	According to Law Decree No. 23/2020: • The deadline to perform the obligations related to the homologated pre-bankruptcy composition with creditors expiring between 23 February 2020 and 31 December 2021 is extended by six months. • The debtor may amend the proposal to the creditors. In proceedings pending as of 23 February 2020, the debtor may request to be granted a	According to Law Decree No. 23/2020: • The deadline to perform the obligations related to the homologated debt restructuring agreements expiring between 23 February 2020 and 31 December 2021 is extended by six months. • The debtor may amend the restructuring plan. In proceedings pending as of 23 February 2020, the debtor may request to be granted a period not exceeding 90 days for the amendment of the plan;	According to Law Decree No. 23/2020 any request for extraordinary administration filed by a creditor from 9 March to 30 June 2020 is not admissible. Only the applications filed by the public prosecutor to obtain precautionary or conservative measures to protect the assets or the business are deemed admissible.

ITALY

Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
	period not exceeding 90 days for the amendment of the plan; such period will run from the date of the court's approval and is not subject to further extension. The request must be filed prior to the date of the hearing scheduled for the court's homologation of the pre-bankruptcy composition. • The debtor may amend the deadlines for the completion of the pre-bankruptcy composition. In this case, the debtor may file, until the date of the hearing scheduled for the court's homologation, a memorandum setting out the new deadlines (which cannot exceed six months with respect to the original deadlines), accompanied by adequate documentation proving the need for said extension. If the judicial commissioner issues a favorable opinion, the court will proceed with the approval, expressly acknowledging the new deadlines. • The debtor that has applied for the so-called "concordato in bianco" may be granted a further 90-day deadline to file the plan and proposal for the composition with creditors even if an application for bankruptcy is pending. In the request, the debtor must indicate the reasons of the requested extension with specific reference to the events that have occurred as a result of the COVID-19 emergency.	such period will run from the date of the court's approval and is not subject to further extension. The request must be filed prior to the date of the hearing scheduled for the court's homologation of the restructuring plan. • The debtor may amend the deadlines for the completion of the restructuring arrangements. In this case, the debtor may file, until the date of the hearing scheduled for the court's homologation, a memorandum setting out the new deadlines (which cannot exceed six months with respect to the original deadlines), accompanied by adequate documentation proving the need for said extension. • A request for a 90-day extension may be filed by the debtor that was granted the deadline provided for by Article 182-bis, paragraph 7, of the Italian Bankruptcy Law.	

ITALY

	Bankruptcy (Fallimento)	Pre-bankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements / turnaround plans (Accordi di Ristrutturazione dei Debiti / Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	The Law Decree No. 23/2020 has postponed the entry into force of the insolvency law reform until 1 September 2021.	The Law Decree No. 23/2020 has postponed the entry into force of the insolvency law reform until 1 September 2021.	The Law Decree No. 23/2020 has postponed the entry into force of the insolvency law reform until 1 September 2021.	The Law Decree No. 23/2020 has postponed the entry into force of the insolvency law reform until 1 September 2021.

UPDATED MAY 8, 2020

JAPAN

JAPAN	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
INITIAL CONSIDERATIONS				
Can you take security over all types of assets, including working capital?	Before the commencement of the proceedings, security can be taken over any types of assets, including working capital. Available forms of security vary depending on the types of the subject assets (e.g., mortgage or pledge over real properties, pledge or security transfer (joto-tanpo) over receivables, shares in a company or movables).			
What is the nature of the process?	• Court-supervised proceedings to liquidate an insolvent debtor and make distributions (if any) to creditors to satisfy existing debts. • The bankruptcy trustee is appointed by the court and administers the case under the court's supervision. • Secured creditors may enforce their security interests outside of the proceedings.	• Court-supervised proceedings to reorganize a debtor pursuant to a rehabilitation plan. • The debtor's existing management continues to operate the debtor's business (i.e., debtor-in-possession type proceedings) under the supervision of the court and the supervisor appointed by the court. The trustee is appointed only in special circumstances. • A rehabilitation plan needs to be accepted by the creditors and confirmed by the court. • Secured creditors may enforce their security interests outside of the proceedings.	• Court-supervised proceedings to reorganize a debtor's business pursuant to a reorganization plan. It is available only for stock corporations. • The trustee is appointed by the court and administers the case under the court's supervision. • A reorganization plan needs to be accepted by the creditors (and in certain situations, shareholders) and confirmed by the court. • Both unsecured creditors and secured creditors are subject to the proceedings and may be paid only pursuant to the plan.	• Liquidation proceedings designed for special cases where there are circumstances that seriously hinder the implementation of the liquidation or a debtor is suspected to be in a state of insolvency. It is available only for stock corporations already in the process of an ordinary liquidation. • The liquidator (usually, one of existing management of the debtor or a qualified lawyer) is appointed by the shareholders' meeting of the debtor and administers the case under the court's supervision.

JAPAN	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
				• The liquidator liquidates the debtor pursuant to a repayment agreement approved by the creditors and confirmed by the court. • Secured creditors may enforce their security interests outside of the proceedings.
What is the solvency requirement?	Available for the debtor in a state of: (1) balance-sheet insolvency (this being the case where the debtor has a net worth deficit) (2) cash-flow insolvency (this being the case where the debtor is generally and continuously unable to pay its debts as they fall due) In this Japan section, the word "bankruptcy" means balance-sheet insolvency and cash-flow insolvency. Cash-flow insolvency will be rebuttably presumed by the debtor's external statement (whether express or implied (such as by doing a flit or dishonoring a bill)) that the debtor is generally and continuously unable to pay its debts as they fall due.	Available for the debtor that: (1) has the risk of bankruptcy (2) is unable to pay debts as they fall due without significantly impairing the debtor's business operations	Available for the debtor that: (1) has the risk of bankruptcy (2) is unable to pay debts as they fall due without significantly impairing the debtor's business operations	Available if: (1) there are any circumstances that seriously hinder the implementation of the liquidation of the debtor (2) the debtor is suspected to be in a state of balance sheet insolvency
Is there a requirement to demonstrate COMI ("centre of main interests")?	No. However, the debtor needs to have an office or property in Japan in order to file a petition for the proceedings.		However, the debtor needs to have a business office in Japan in order to file a petition for the proceedings. In addition, this process is available only for debtors that are stock corporations.	No. However, this process is available only for debtors that are stock corporations.

JAPAN	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
Is restructuring of both secured and unsecured claims possible?	No, this process deals only with unsecured claims (including the unsecured portion of secured claims).	No, this process deals only with unsecured claims (including the unsecured portion of secured claims).	Yes, this process deals with both secured and unsecured claims.	No, this process deals only with unsecured claims (including the unsecured portion of secured claims).
Is there a classification of creditors and shareholders?	No.		Yes. In general, creditors and shareholders are classified in the following classes for voting purposes. (1) secured creditors (2) prioritized unsecured creditors (3) general unsecured creditors (4) subordinated unsecured creditors (5) preferred shareholders (6) ordinary shareholders The court has discretion to combine or separate those classes, with the exception that secured creditors, unsecured creditors and shareholders are required to be in separate classes.	No.
Is there a requirement for voting approvals by shareholders?	No. Voting approvals by shareholders are not required.	No. Voting approvals by shareholders are not required.	Approval with a simple majority of the total voting rights of the shareholders is required only if the debtor is not in a state of balance-sheet insolvency. On the other hand, if the debtor is in a state of balance-sheet insolvency, no voting approval by the shareholders is required.	No. Voting approvals by shareholders are not required.

JAPAN

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
Is there a requirement for voting approvals by shareholders creditors?	No. Voting approvals by creditors are not required.	It is required that a rehabilitation plan is accepted by: • a majority in number of the allowed unsecured creditors having attended the creditors' meeting or having voted in writing • a majority in amount of the total allowed unsecured claims	It is required that a reorganization plan is accepted by: • a majority in amount of the total unsecured claims • secured creditors holding: ▸ two-thirds in amount of the total secured claims if the plan provides rescheduling of secured debts ▸ three-quarters in amount of the total secured claims if the plan provides restructuring of secured debts other than by way of debt rescheduling ▸ nine-tenths in amount of total secured claims if the plan provides the closure of the debtor's whole business • a majority of the total voting rights of the shareholders (only if the debtor is not in a state of balance-sheet insolvency)	It is required that a repayment agreement is accepted by: • a majority in number of the unsecured creditors having attended the creditors' meeting or having voted in writing • unsecured creditors holding two-thirds of the total amount of unsecured claims
Is there an ability to bind minority dissenting creditors?	N/A. Voting approvals are not required.	Yes.	Yes.	Yes.
COMMENCING THE PROCESS				
Who can commence?	The process is commenced by a petition of (1) the debtor, (2) any prepetition unsecured creditors (i.e., bankruptcy creditors), (3) any director or equivalent or (4) a liquidator (if the debtor is a liquidating company).	The process is commenced by a petition of (1) the debtor or (2) any prepetition unsecured creditors (i.e., rehabilitation creditors) (only where the debtor has the risk of bankruptcy).	The process is commenced by a petition of (1) the debtor, (2) any creditor(s) with an aggregate amount of claims that is at least 10% of the debtor's stated capital or (3) any shareholder(s) holding at least 10% of the total voting rights. Provided, (2) and (3) are applicable only where the debtor has the risk of bankruptcy.	The process is commenced by application of (1) any creditor, (2) a liquidator, (3) a statutory auditor and (4) a shareholder. A liquidator is obliged to file a petition if the debtor is suspected to be in a state of balance-sheet insolvency.

JAPAN	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
Is shareholder's consent required to commence proceeding?	No.	No.	No.	Except where a higher voting requirement is provided for in the debtor's articles of incorporation, the consent of shareholders who hold two-thirds or more of the total voting rights is required to dissolve the debtor and initiate the ordinary liquidation proceedings, which precede the special liquidation proceedings.
Is there an ability to consolidate group estates?	No. The proceedings for group companies may be jointly administered and coordinated by a single court, but Japanese laws respect legal entities and do not recognize the concept of group estates or substantive consolidation.			
Is there any court involvement?	Yes, the court supervises the process. Certain matters/conducts require the court's prior approval.	Yes, the court supervises the process. Certain matters/conducts require the prior approval of the court or the supervisor appointed by the court. The court must confirm the rehabilitation plan.	Yes, the court supervises the process. Certain matters/conducts require the court's prior approval. The court must confirm the reorganization plan.	Yes, the court supervises the process. Certain matters/conducts require the court's prior approval. The court must confirm the repayment agreement.
Who manages the debtor?	The bankruptcy trustee appointed by the court.	The existing management of the debtor (i.e., debtor-in-possession) generally retains the power to manage the debtor's business and other affairs. In rare cases, where the court finds the debtor's management inappropriate, the court may appoint the trustee to replace the existing management of the debtor.	The reorganization trustee appointed by the court. The reorganization trustee is usually a third-party qualified lawyer. However, the court may appoint a former member of management as the trustee, as long as this person was not responsible for the potential damage claims that might be pursued for any business failure caused by the debtor's management.	The liquidator (usually a former member of the management of the debtor or a qualified lawyer) appointed by the shareholders' meeting of the debtor.

JAPAN

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
What is level of disclosure of process to voting creditors?	N/A. Voting approvals by creditors are not required. However, the trustee discloses to the creditors certain information on the debtor and the proceedings at creditors' meetings.	Creditors' meetings (including voluntary explanatory sessions) are held to provide creditors with certain information on the debtor and the proceedings. When the court has decided to submit a rehabilitation plan to the creditors' meeting for their approval, the plan and relevant information are provided to creditors sufficiently in advance of the creditors' meeting for voting on the plan.	Stakeholders' meetings (including voluntary explanatory sessions) are held to provide stakeholders with certain information on the debtor and the proceedings. When the court has decided to submit a reorganization plan to the stakeholders' meeting for their approval, the plan and relevant information are provided to stakeholders sufficiently in advance of the stakeholders' meeting for voting on the plan.	Creditors' meetings (including voluntary explanatory sessions) are held to provide creditors with certain information on the debtor and the proceedings. A repayment plan and relevant information are provided to creditors sufficiently in advance of the creditors' meeting for voting.
What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?	No entity (except for national and local governments) is generally excluded from the process. Financial institutions may be subject to special rules.		This process is only available for stock corporations. Financial institutions (which are stock corporations) are subject to special rules set out in the Act on Special Measures for the Reorganization Proceedings of Financial Institutions.	This process is only available for stock corporations. Financial institutions may be subject to special rules.
How long does it generally take for a creditor to commence the procedure?	This varies depending on the circumstances (e.g., whether and to what extent the creditor may prove the requirements of commencement of the cases and whether the debtor challenges the petition), but it usually takes considerably longer than voluntary insolvency cases (e.g., from one month to six months or longer).			
EFFECT OF PROCESS				
Does debtor remain in possession with continuation of incumbent management control?	No. The debtor loses its management control, which passes to the trustee upon the commencement of the process.	Generally yes. The debtor remains in possession with management control, subject to the supervision by the court or the supervisor appointed by the court, unless the trustee is appointed by the court in special circumstances.	Generally no. The debtor loses its management control, which passes to the trustee upon the commencement of the process. However, under certain circumstances, the court may appoint a former member of management as the trustee.	Generally no. However, the liquidator, appointed by the debtor's shareholders' meeting, who may be a former member of management of the debtor, takes control on the debtor.

JAPAN

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
What is the stay/moratorium regime (if any)?	Upon the commencement of the process, unsecured creditors are automatically stayed from enforcing any pre-commencement claims against the debtor, while secured creditors are not prohibited from enforcing their security rights. In addition, during the period from the filing of the petition to the commencement of the process, the court may grant an order staying pending prepetition enforcement actions against the debtor or prohibiting making any enforcement actions against the debtor, except for enforcement of security interests.		Upon the commencement of the process, both the unsecured creditors and secured creditors are automatically stayed from enforcing any pre-commencement claims or security interests against the debtor. In addition, during the period from the filing of the petition to the commencement of the process, the court may grant an order staying pending prepetition enforcement actions against the debtor or prohibiting making any enforcement actions against the debtor, including enforcement of security interests.	Upon the commencement of the process, general unsecured creditors are automatically stayed from enforcing any pre-commencement claims against the debtor outside the process, while secured creditors are not prohibited from enforcing their security rights and prioritized creditors are not prohibited from enforcing their claims. In addition, during the period from the filing of the petition to the commencement of the process, the court may grant an order staying pending prepetition enforcement actions against the debtor or prohibiting making any enforcement actions against the debtor, except for enforcement of security interests and prioritized claims.
Is there a provision for debtor in possession super priority financing?	No.	No. Post-petition DIP loans could be entitled to administrative expense status ("common benefit claims"), which has priority over other claims, but do not have priority over other types of administrative expense claims.		No.
Can procedure be used to implement debt-to-equity swap?	No.	Yes, a rehabilitation plan may provide a debt to-equity swap arrangement.	Yes, a reorganization plan may provide a debt to-equity swap arrangement.	No.
Are third party releases available?	No.			
Are the proceedings recognised abroad?	Yes, subject to the domestically adopted version of the UNCITRAL Model Law or other applicable conflicts of laws principals or treaties.			

JAPAN	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
Has the UNCITRAL Model Law been adopted?	Yes. The Law on Recognition of and Assistance in Foreign Insolvency Proceedings is largely modelled on the UNCITRAL Model Law.			
How long, complex and expensive is the process?	It would vary depending on the circumstances, such as the size of the debtor and the complexity of the case, but the process usually takes from several months to one year to complete.	It would vary depending on the circumstances, such as the size of the debtor and the complexity of the case, but the process usually takes from several months to one year to complete. According to the standard timetable of civil rehabilitation cases adopted by the Tokyo District Court, it takes around five months from the filing of the petition to the confirmation of the rehabilitation plan.	It would vary depending on the circumstances, such as the size of the debtor and the complexity of the case, but this process is generally considered more complex, time-consuming and costly compared with other types of insolvency proceedings. The process usually takes one to two years to complete. According to the standard timetable of corporate reorganization cases adopted by the Tokyo District Court, it takes around 12 months from the filing of the petition to the confirmation of the reorganization plan.	It would vary depending on the circumstances, such as the size of the debtor and the complexity of the case, but the process usually takes several months to one year to complete.
Is there a mandatory set-off of mutual debts on insolvency?	No. Set-off rights under contracts or non-bankruptcy law are available in the insolvency proceedings subject to some prohibitions and restrictions in certain circumstances.			
Can a debtor continue to carry on business during insolvency proceedings?	Generally no. As an exception, a debtor can continue to carry on the business with permission of the court.	Yes. A debtor can carry on business throughout the process.	The trustee can carry on the debtor's business throughout the process.	No.

JAPAN

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
OTHER FACTORS				
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	In general, there are no insolvency trading restrictions and the directors of the debtor do not owe any obligation to file insolvency proceedings. However, the directors may be subject to civil liability to the company (if such involvement amounts to a breach of the duty of care owed to the company) and/or third parties who incur damage as a result of the directors' misconduct (if the damage is caused by the directors' willful intent or gross negligence). In addition, each of these proceedings has a special summary procedure in which the trustee or the supervisor may seek personal liability of the directors of the debtor.			
What is the order of priority of claims?	The order of priority of claims is as follows: (1) secured claims (i.e., secured creditors can generally enforce their security outside the process) (2) administrative expense claims (zaidan saiken), which may be satisfied from the bankruptcy estate in priority to other unsecured claims (3) priority unsecured claims (i.e., unsecured claims that are given statutory priority, such as statutory liens), which may be satisfied from the bankruptcy estate in priority to general unsecured claims (4) general unsecured claims (5) subordinated claims (e.g., interest that accrue post-commencement of the process)	The order of priority of claims is as follows: (1) secured claims (i.e., secured creditors can generally enforce their security outside the process) (2) administrative expense claims (kyoeki saiken), which may be satisfied in full as they fall due outside the rehabilitation plan (3) priority unsecured claims (i.e., unsecured claims that are given statutory priority, such as statutory liens), which may be satisfied in full as they fall due outside the rehabilitation plan (4) general unsecured claims, which may be satisfied only pursuant to the rehabilitation plan (5) subordinated claims, which may be satisfied only pursuant to the rehabilitation plan	The order of priority of claims is as follows: (1) administrative expense claims (kyoeki saiken), which may be satisfied in full as they fall due outside the reorganization plan (2) secured claims, which may be satisfied to the extent of the value of collateral only pursuant to the reorganization plan (3) priority unsecured claims (i.e., unsecured claims that are given statutory priority, such as statutory liens), which may be satisfied only pursuant to the reorganization plan (4) general unsecured claims, which may be satisfied only pursuant to the reorganization plan (5) subordinated claims, which may be satisfied only pursuant to the rehabilitation plan	The order of priority of claims is as follows: (1) secured claims (i.e., secured creditors can generally enforce their security outside the process) (2) claims relating to administrative expenses and claims that are given statutory priority (such as statutory liens), which may be satisfied in full as they fall due outside the repayment agreement (3) other unsecured claims, which are subject to a pro rata distribution from the remaining funds after the payments to claims (1) and (2)
Are there any pension liabilities?	It may vary depending on a pension scheme (such as whether it is DC or DB, or whether a trust bank or insurance company manages the pension) or whether there are any unfunded obligations.			

JAPAN	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
Is it possible to challenge prior transactions?	Yes. The trustee or the supervisor may seek several types of avoidance actions including the following. The avoidance actions must be sought within the earlier of two years from the date of commencement of the case or 20 years from the date when the transaction was entered into. **Preferences** Upon commencement of insolvency proceedings, the following acts are voidable as a preference: • the debtor paid an existing claim or collateralized its assets to secure an existing claim, after the debtor became unable to pay debts or filed for any of insolvency proceedings, and the creditor was aware of the occurrence of the substantial insolvency event • the debtor paid an existing claim or collateralized its assets to secure an existing claim within 30 days before the debtor became unable to pay debts, despite the fact that the debtor was not obligated to do so (except where the beneficiary was unaware that such payment or collateralization harmed other creditors) **Fraudulent transfers** Upon commencement of insolvency proceedings, the following acts (except for collateralizing assets and paying existing claims) are voidable as a fraudulent transfer: • the debtor and the beneficiary entered into a transaction with knowledge that the transaction harmed the interests of other creditors • after the suspension of payments or filing for any insolvency proceedings (collectively "**Suspension of Payments**"), the debtor entered into a transaction that harmed the interests of creditors and the beneficiary was aware of both the occurrence of the Suspension of Payments and the fact that the transaction harmed the creditors • after or within six months prior to the Suspension of Payments, the debtor and the beneficiary entered into a transaction in which the debtor received no or substantially no consideration		Avoidance actions are not available in this process. However, separate mechanisms may exist under the Civil Code for a creditor to seek cancellation of certain transactions that are detrimental to the creditors.

JAPAN

Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation

COVID-19

Is state support for distressed businesses available?	Yes, the government and municipalities provide various subsidies and loans for businesses facing financial difficulties due to COVID-19.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	No, there are no dispensations or amendments in light of COVID-19 from a perspective of insolvency law.
Is further reform of the insolvency regime being discussed/anticipated? If so, give details.	No.

UPDATED MAY 7, 2020

KAZAKHSTAN

KAZAKHSTAN	Bankruptcy	Rehabilitation	Restructuring
INITIAL CONSIDERATIONS			
Can you take security over all types of assets, including working capital?	Security can be taken over most types of assets, including receivables and property (both immovable and movable), with the exception of property that is inseparably connected with the identity of the creditor (i.e., claims for alimony and damage caused to health and safety, etc.). The most common forms of security are mortgages, floating charges, pledge of securities and pledge of rights. Assignments by way of security are not specifically recognized by Kazakhstani law and are rarely used.		
What is the nature of the process?	A court process leading to insolvency liquidation of the debtor. After the court declares the debtor bankrupt, the debtor loses its capacity to manage and dispose of the bankruptcy estate, and all court enforcement procedures relating to security or otherwise are postponed. The power to undertake any legal action in respect of the bankruptcy estate passes to the receiver. With limited exceptions, the bankruptcy estate consists of all of the bankrupt debtor's assets. The receiver sells the bankruptcy estate and distributes the proceeds among the creditors in the established order of priorities.	A court process leading to the reorganization of the debtor's assets and liabilities in order to restore its solvency.	A court process whereby the company and its creditors agree to restructure the company's debts. Once the restoring agreement is sanctioned by court, it is binding upon all creditors.

KAZAKHSTAN	Bankruptcy	Rehabilitation	Restructuring
What is the solvency requirement?	A creditor can initiate bankruptcy proceedings against a company if the company fails to pay its debt to the creditor, whose debt has either: (a) been confirmed by a court judgment; or (b) admitted by the company. A debtor can apply to the court for the commencement of bankruptcy proceedings if the company's obligations exceed the value of its property as of the date of: (a) filing a bankruptcy petition; and (b) the beginning of the year in which the bankruptcy petition was filed (the so-called "persistent insolvency").	A creditor or the debtor can commence rehabilitation proceedings if the debtor fails to pay its debts within four months after they become due (or three months for certain types of claims).	A debtor can apply to court for commencement of restructuring proceedings if it failed to pay its debts within four months after they become due (or three months for certain types of claims).
Is there a requirement to demonstrate COMI ("centre of main interests")?	No. Only companies registered in Kazakhstan may be the subject to bankruptcy proceedings under Kazakhstan's bankruptcy laws.		
Is restructuring of both secured and unsecured claims possible?	There is no restructuring. The aim of the procedure is to liquidate the debtor's assets and distribute the proceeds to the creditors in accordance with their respective priority rights.	Yes.	Yes.
Is there a classification of creditors and shareholders?	Yes. The bankruptcy law establishes an order of priority amongst creditors in insolvency liquidation. The law grants certain benefits to creditors whose debts are secured by pledge granted by the insolvent entity. Claims of secured creditors are second in the order of priority of claims, ahead of claims of tax authorities for tax arrears (the third order of priority), claims of general unsecured creditors (the fourth order of priority) and claims of any creditors for damages and penalties (the fifth order of priority).	No.	No.
Is there a requirement for voting approvals by shareholders?	No.	No.	No.

KAZAKHSTAN	Bankruptcy	Rehabilitation	Restructuring
Is there a requirement for voting approvals by shareholders' creditors?	No. Shareholders and other affiliates of the debtor are not allowed to vote at the creditors' meetings.	No. Shareholders and other affiliates of the debtor are not allowed to vote at the creditors' meetings.	N/A
Is there an ability to bind minority dissenting creditors?	N/A	Yes. The reorganization plan will be approved in the case of a positive vote by a majority of votes of creditors of the second (secured creditors) and fourth (general unsecured creditors) orders of priority. If such approval is obtained and subject to court ratification, the minority dissenting creditors are nevertheless bound by the reorganization plan.	No. The restructuring agreement must be signed by all creditors of the insolvent company.
COMMENCING THE PROCESS			
Who can commence?	The debtor, one or more creditors or the public prosecutor can communicate.	The debtor or one or more creditors can communicate.	The debtor can communicate.
Is shareholders' consent required to commence proceedings?	No.	No.	No.
Is there an ability to consolidate group estates?	No.	No.	No.
Is there any court involvement?	Yes. The court opens and supervises the process.	Yes. The court opens and supervises the process. Any reorganization plan approved by the creditors is to be ratified by the court.	Yes. The court opens and supervises the process. Any restructuring agreement signed by the debtor and creditors is to be ratified by the court.
Who manages the debtor?	A court-appointed independent bankruptcy trustee manages the debtor.	A manager appointed by the meeting of creditors manages the debtor. The creditors may appoint the CEO of the debtor as such a manager.	The management of the debtor is not affected by the commencement of the restructuring proceedings.
What is the level of disclosure of the process to voting creditors?	Creditors will be notified of any creditor meeting no earlier than 10 days prior to the meeting.	Creditors will be notified of any creditor meeting no earlier than 10 days prior to the meeting.	N/A

KAZAKHSTAN

	Bankruptcy	Rehabilitation	Restructuring
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	The general insolvency and rehabilitation proceedings do not apply to state establishments, accumulative pension funds, banks, insurance and reinsurance companies. State establishments generally cannot be placed into bankruptcy proceedings. Pension funds, banks, insurance/reinsurance companies are liquidated pursuant to specific laws and regulations applicable to those entities.		
How long does it generally take for a creditor to commence the procedure?	The court must commence the procedure within five business days after receiving the bankruptcy petition together with all the required supporting documents. However, a creditor may commence bankruptcy proceedings only if the debtor fails to pay an amount due to the creditor pursuant to a court judgment, or where the debtor admits its inability to repay the debt. Thus, unless the debtor admits its inability to repay the debt, the creditor will first need to obtain a court judgment confirming its claim against the debtor.	The court must commence the procedure within five business days after receiving the bankruptcy petition together with all the required supporting documents.	N/A. The procedure is commenced by the debtor.
EFFECT OF PROCESS			
Does debtor remain in possession with continuation of incumbent management control?	No. A court-appointed bankruptcy trustee assumes control.	No. A manager appointed by the creditor's meeting assumes control.	N/A. The management of the debtor is not affected by the commencement of the restructuring proceedings.
What is the stay/moratorium regime (if any)?	N/A	The debtor benefits from a moratorium from the opening of the procedure by the court. Subject to limited exceptions, creditors may not take any enforcement action.	Creditors are not allowed to file bankruptcy petitions against the debtor during the restructuring proceedings.
Is there a provision for debtor-in-possession super priority financing?	No.	No.	N/A
Can the procedure be used to implement a debt-to-equity swap?	No.	No.	N/A

KAZAKHSTAN

	Bankruptcy	Rehabilitation	Restructuring
Are third-party releases available?	No.	No.	N/A
Are the proceedings recognized abroad?	There is no firmly established approach. Kazakhstan is a party to a number of international treaties on the recognition and enforcement of court judgments, although none of these directly deal with matters of bankruptcy. These include the CIS Convention "On Legal Aid in Civil and Family Law Disputes and Criminal Prosecution" adopted in Minsk on 22 January 1993 and the CIS Agreement "On the Procedure for Settlement of Disputes related to Economic Activity" adopted in Kiev on 20 March 1992. Additionally, the proceedings may also be recognized and enforced based on reciprocity.		
Has the UNCITRAL Model Law been adopted?	No.		
How long, complex and expensive is the process?	It depends on the size of the company and the nature of any recovery litigation conducted by the bankruptcy manager. The process can take months or years, and costs and complexity vary.		The process must be completed within two months after its commencement.
Is there a mandatory set-off of mutual debts on insolvency?	No, but the creditors' committee can order a set-off of mutual debts.	No, but the creditors' committee can order a set-off of mutual debts.	N/A
Can a debtor continue to carry on business during insolvency proceedings?	The court may authorize the bankruptcy trustee to continue the business.	Yes.	Yes.

OTHER FACTORS

Are there any wrongful or insolvent trading restrictions, and what is the directors' liability?	A shareholder and/or official of the insolvent entity can be subject to secondary liability if their actions resulted in the so-called "intentional bankruptcy," of if they failed to commence bankruptcy proceedings where required.

KAZAKHSTAN	Bankruptcy	Rehabilitation	Restructuring
What is the order of priority of claims?	Kazakhstani law envisages the following ranking of claims (creditors): Administrative and court expenses relating to the proceedings are outside of the order of priorities and are repaid first. First order of priority: Claims connected with bodily injuries and other injuries to health, claims of employees regarding their salaries and severance payments, pension fund contributions and royalties to authors of items of intellectual property. Second order of priority: Claims secured by pledges (only pledges granted under Kazakhstani law are eligible for this order of priority) and claims resulting from the bankruptcy official's borrowing loans during the course of bankruptcy proceedings. Third order of priority: Tax and customs debts. Fourth order of priority: Claims of general unsecured creditors. Fifth order of priority: Claims for damages, default interest, penalties, etc. Sixth order of priority: Claims that were filed after the deadline for filing claims.	N/A. There is no statutory priority of claims for rehabilitation.	N/A
Are there any pension liabilities?	No.	No.	N/A

KAZAKHSTAN

	Bankruptcy	Rehabilitation	Restructuring
Is it possible to challenge prior transactions?	The bankruptcy law obliges the insolvency official to seek a court order on the invalidation of transactions of the insolvent entity, concluded within three years prior to commencement of insolvency proceedings against a Kazakhstani entity, in any the following cases: • The price and/or other terms of the transactions are substantially worse for the insolvent entity in comparison to similar transactions entered into in similar circumstances, provided that the transaction caused financial loss to the insolvent entity. • The transaction was entered in violation of the insolvent entity's capacity, if such capacity is restricted by its constituent documents or Kazakhstani law, or the transaction was an ultra-wires transaction. • Property was transferred for free or at a price that was substantially lower than the price for identical or homogeneous property in comparable circumstances, or without grounds to the detriment of creditors. • The transaction that was concluded within six months prior to the commencement of insolvency liquidation or rehabilitation proceedings caused preferential treatment of some creditors compared with the other creditors. • The transaction was a gift.	The rehabilitation manager has the right to unilaterally rescind agreements of the company undergoing rehabilitation, which have not yet been fully or partially performed, in any of the following cases: • The subject agreement is between the insolvent entity and its affiliate. • The agreement contains terms that are burdensome for the insolvent entity as compared with earlier concluded similar agreements. • The agreement is entered for a term exceeding one year, or is intended to bring benefits to the insolvent entity only in the distant future. • There are grounds to believe that the performance of the agreement by the insolvent entity will result in adverse consequences to the other creditors of the insolvent entity.	N/A

KAZAKHSTAN

	Bankruptcy	Rehabilitation	Restructuring

COVID-19

Is state support for distressed businesses available?	No.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	Tax holidays have been granted to certain types of business (e.g., airlines, airports, hotels, movie theatres, etc.) due to COVID-19. The National Bank of Kazakhstan will provide financing for small and medium businesses.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	No.

UPDATED MAY 5, 2020

MALAYSIA

MALAYSIA	Corporate voluntary arrangement (CVA)	Judicial management (JM)
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Yes. Creditors may take security over all types of assets, including cash or working capital, either via a floating charge or a fixed charge and assignment over cash deposit in a bank account.	Same as CVA.
What is the nature of the process?	A CVA is essentially an arrangement between the company and its creditors. Upon commencing a CVA, a moratorium will come into force allowing a viable but struggling company the opportunity to repay its debts over a period of time to be agreed in the CVA.	The JM process is a form of court-supervised rescue mechanism available for companies in financial difficulty. Upon the application of the company or its creditors, the court will appoint a judicial manager to manage the affairs of the company who will decide whether to rescue the company or dispose of the business as a going concern or of its assets for a better return.
What is the solvency requirement?	There is no solvency requirement. This process is available for both solvent and insolvent companies as a form of corporate restructuring mechanism or a debt restructuring exercise.	The court must be satisfied that the company is or will be unable to pay its debts and that the order for JM, if granted, is likely to achieve one or more of the following: i. the survival of the company, or the whole or part of its undertaking as a going concern ii. the approval of a compromise or arrangement between the company and any such persons involved iii. a more advantageous realization of the company's assets would be effected than on a winding up.
Is there a requirement to demonstrate COMI ("centre of main interests")?	N/A	N/A

MALAYSIA

	Corporate voluntary arrangement (CVA)	Judicial management (JM)
Is restructuring of both secured and unsecured claims possible?	The CVA cannot affect the rights of any secured creditor of the company to enforce their security, except with the concurrence of the secured creditor concerned.	Generally, the judicial manager may only deal with unsecured claims. To deal with the charged property of the company, the judicial manager must obtain a court order.
Is there a classification of creditors and shareholders?	No.	No.
Is there a requirement for voting approvals by shareholders?	Yes. Approval requires a simple majority vote (more than 50%) of the members.	Yes, shareholder approval by special resolution (approved by 75%) is only required for the shareholders for the company to commence the JM process. Shareholder approval is not required where creditors commence the JM process.
Is there a requirement for voting approvals by creditors?	Yes. At the meeting of the creditors, the proposed CVA must be approved by 75% of the total value of creditors present and voting at the meeting, either in person or by proxy.	Yes. The judicial manager's statement of proposal must be approved by 75% of the total value of the creditors present and voting at the meeting, either in person or by proxy.
Is there an ability to bind minority dissenting creditors?	Once the required majority approves the proposed CVA at the creditors and members meeting, it shall take effect and be binding on all creditors of the company, whether or not the creditors had voted in favor of the proposal.	Once the judicial manager's proposal is approved, it shall be binding on all creditors of the company, whether or not the creditors had voted in favor of the proposal.
COMMENCING THE PROCESS		
Who can commence?	The directors of a company, the judicial manager (if the company is under a judicial management order) or the liquidator (if the company is being wound up).	The company itself or its directors, under a resolution of its members or the board of directors, or a creditor (including any contingent or prospective creditor), or all or any of those parties, together or separately.
Is shareholders' consent required to commence proceedings?	Yes.	Yes, only where the company applies to commence proceedings. Where creditors apply to commence proceedings, shareholders' consent is not required.
Is there an ability to consolidate group estates?	N/A	N/A

MALAYSIA

	Corporate voluntary arrangement (CVA)	Judicial management (JM)
Is there any court involvement?	There is minimal court involvement in a CVA. If any of the company's creditors or any other person is dissatisfied by any act, omission or decision or the supervisor, the company's creditor may appeal to the court under Section 401(4) of the Companies Act 2016.	The court is responsible for appointing the judicial manager and issuing the JM order. Once the JM order is granted, the court takes a hands-off approach whereby the judicial manager is only required to report the result of the meeting to the court and the Companies Commission of Malaysia and to such other persons as the court may approve.
Who manages the debtor?	Either the nominee or a supervisor in charge of supervising the implementation of the CVA.	The judicial manager will oversee the implementation of the proposal. Once the purpose of the JM order has been achieved, the judicial manager may apply to discharge the order.
What is the level of disclosure of the process to voting creditors?	Disclosure of the CVA process and company's affairs is required as the CVA is subject to the creditors' approval.	Disclosure of JM process and ultimate proposal to creditors is required — a JM application can be dismissed if opposed by a secured creditor/debenture holder.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	i. Public companies ii. Licensed institutions or operators of designated payment systems under Bank Negara laws iii. Companies subject to the Capital Markets and Services Act, 2007 iv. Companies that create a charge over its property or any of its undertaking	i. Licensed institutions or operators of designated payment systems under Bank Negara laws ii. Companies subject to the Capital Markets and Services Act, 2007
How long does it generally take for a creditor to commence the procedure?	N/A as directors of the company commence the procedure with a nominee.	1-3 months to make an application for JM.
EFFECT OF PROCESS		
Does the debtor remain in possession with continuation of incumbent management control?	Yes. It is a management-driven restructuring process with minimal court involvement, but the creditors will typically appoint an independent insolvency practitioner to supervise the implementation of the proposal.	No. The key feature of judicial management is that the process is no longer management-driven.
What is the stay/moratorium regime (if any)?	A moratorium commences automatically upon filing the requisite documents as listed in Section 398(1) of the Companies Act 2016.	A moratorium commences automatically upon the filing of the JM application.

MALAYSIA

	Corporate voluntary arrangement (CVA)	Judicial management (JM)
Is there a provision for debtor-in-possession super priority financing?	There is no specific provision on this matter. This would depend on the terms of the arrangement.	Same as CVA.
Can the procedure be used to implement a debt-to-equity swap?	There is no restriction on debt-to-equity swaps.	Same as CVA.
Are third-party releases available?	Generally not, unless specifically agreed in the proposal (e.g., release of third-party security providers/guarantors).	Same as CVA.
Are the proceedings recognized abroad?	There is no provision under the Companies Act 2016 for cross-border assistance or corporation relating to Malaysian insolvency proceedings with a foreign dimension. The UNCITRAL Model Law on Cross-Border Insolvency provides for mechanisms to deal with cases of cross-border insolvency proceedings. However, Malaysia has not incorporated this model law into domestic legislation.	Same as CVA.
Has the UNCITRAL Model Law been adopted?	No.	No.
How long, complex and expensive is the process?	The CVA process is meant to be quick and cost-effective as there is no need to have the plan or arrangement approved by a court.	This would depend on the size and complexity of the proposed restructuring plan of the judicial manager. It should be noted that the judicial manager must perform certain actions within stipulated timelines, for example, devising a statement of proposal within 60 days of making the JM order.
Is there a mandatory set-off of mutual debts on insolvency?	The Companies Act 2016 only provides for the right to set-off in winding up procedures.	Same as CVA.
Can a debtor continue to carry on business during insolvency proceedings?	Yes. The CVA should not affect the day-to-day operations of the business.	Yes; however, operations will be carried out by the judicial manager, as during the period for which a JM order is in force, all powers conferred and duties imposed on the directors shall be exercised and performed by the judicial manager and not by the directors.

MALAYSIA

	Corporate voluntary arrangement (CVA)	Judicial management (JM)
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Directors of a company will always be subject to any claims of:- i. preferential debts ii. insolvent trading iii. fraudulent trading There are criminal sanctions to directors involved including imprisonment and fines or both.	Same as CVA.
What is the order of priority of claims?	The order of priority will be subject to what has been agreed in the arrangement.	Same as CVA.
Are there any pension liabilities?	N/A	N/A
Is it possible to challenge prior transactions?	Yes.	Yes.
COVID-19		
Is state support for distressed businesses available?	Yes, the Malaysian government has announced various stimulus packages in an effort to support businesses affected by the COVID-19 pandemic. Briefly, the key measures available for businesses are as follows: (a) **Restructuring and rescheduling of loans:** financial institutions will offer a deferment/moratorium of loan/financing repayments to individuals and small medium enterprises for a period of six months, with effect from 1 April 2020. Corporate borrowers may approach their financiers to request a similar deferment. (b) **Bank facilities for small and medium enterprises (SMEs):** SMEs (defined as (i) manufacturing firms with a sales turnover not exceeding MYR 50 million or not exceeding 200 full-time employees; or (ii) service or other sector firms with sales turnover not exceeding MYR 20 million or not exceeding 75 full-time employees) may apply to various participating banks for low/zero interest loans (e.g., Special Relief Facility, Agrofood Facility and Automation and Digitalization Facility).	

MALAYSIA

	Corporate voluntary arrangement (CVA)	Judicial management (JM)
	(c) **MYR 3,000 grant to micro enterprises:** micro enterprises with a sales turnover of less than MYR 300,000 or less than five full-time employees registered with the Inland Revenue Board may apply for a grant of MYR 3,000. (d) **Tax-deduction for offering rent-free periods:** landlords who offer SMEs a reduction of at least 30% of the rental fee on the SME's business premises will be eligible for an income tax deduction of an equivalent amount from April to June 2020. (e) **Wage Subsidy Program:** Companies hiring employees earning MYR 4,000 and below may apply to the Malaysian Social Security Organization (PERKESO) for the Wage Subsidy Program, whereby the government will contribute MYR 600 - MYR 1,200 per employee, depending on the total number of employees of the company for three months, subject to the company meeting various eligibility criteria. (f) **Utilities discount:** there is a 15% discount on sectors adversely affected by COVID-19 (e.g., hotel operators, travel and tour agencies, shopping malls, convention centers, offices of domestic flight companies). For all other sectors, there is a 2% discount from 1 April to 30 September 2020. In addition, the government has proposed a tiered rebate on electricity bills for all domestic users in Peninsular Malaysia up to a maximum consumption rate of 600 kWh. (g) **Employer Advisory Services by the Employees' Provident Fund:** the Employees' Provident Fund board will be providing Employer Advisory Services from 15 April 2020 to provide customized advisory support services for employers, specifically with regards to the employers' portion of EPF contributions during the current economic downturn. (h) **Exemption from Human Resource Development Fund (HRDF):** companies in the manufacturing, services, mining and quarrying sector with 10 or more employees are exempt from paying levy payments to the HRDF Fund for six months starting from April 2020. The levy on foreign workers is reduced by 25% for all companies with work permits that will expire in the period from 1 April to 31 December 2020.	
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	None as at the date of this questionnaire.	None as at the date of this questionnaire.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	None as at the date of this questionnaire.	None as at the date of this questionnaire.

Scheme of arrangement (SoA)/ Winding-up

MALAYSIA

	Scheme of arrangement (SoA)	Winding-up
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Same as CVA.	Same as CVA.
What is the nature of the process?	A SoA is a court-approved compromise or arrangement made between the company and its creditors, where the company may persuade its creditors that it is in their interest to accept a compromise of their debts.	There are two types of winding-up processes in Malaysia. These are: i. voluntary winding-up ii. compulsory winding-up A voluntary winding-up may be initiated by either a company's members or by a company's creditors. Where a company is wound up voluntarily by its members, the passing of a special resolution is required. A compulsory winding-up is commenced upon the issuance of a statutory notice of demand and subsequently the presentation of the winding up petition. Both winding-up processes involve the company entering into liquidation, the distribution of the value of assets to creditors after disposal of such assets, and the eventual dissolution of the company.
What is the solvency requirement?	Same as for CVA.	In a members' voluntary winding-up, the director or majority of the directors of a company are required to prepare a declaration of solvency stating that: i. The directors have made an inquiry into the affairs of the company. ii. At the meeting of directors, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding-up. In a creditors' winding-up, the company is insolvent and the directors of the company make a statutory declaration that the company cannot continue its business by reason of its liabilities.
Is there a requirement to demonstrate COMI ("centre of main interests")?	N/A	N/A

MALAYSIA

	Scheme of arrangement (SoA)	Winding-up
Is restructuring of both secured and unsecured claims possible?	The creditors must be classified into different classes based on their legal rights. For example, secured creditors would make up one class and unsecured creditors another class. Different meetings will be held based on the creditor classes.	No. Upon winding up, restructuring is no longer possible. The liquidator will exercise its powers to deal with the company's assets and distribute the proceeds accordingly.
Is there a classification of creditors and shareholders?	Yes. It is the responsibility of the applicant to organize the composition of the classes of creditors. Classes will be viewed as separate if their interests are so different that they will not be able to consult together with a view to their common interest. The liquidator assesses the viability of the scheme and prepares a report on whether the proposed scheme has classified the creditors correctly amongst others.	Yes. The Companies Act 2016 provides for different rights and duties of secured and unsecured creditors in the winding-up process.
Is there a requirement for voting approvals by shareholders?	Yes, shareholder approval is only required where the SoA is proposed by the company, in these circumstances, at least 75% majority in value of the members or classes of members present and voting is required.	Yes. In the case of a voluntary winding-up: i. An ordinary resolution (more than 50%) is required where the period expires or on the occurrence of an event as specified in the company's constitution. ii. A special resolution (approved by 75%) where the company chooses to voluntarily wind-up. This is not required in a compulsory winding-up.
Is there a requirement for voting approvals by creditors?	Yes. The proposed scheme must be approved by a 75% majority in value of the creditors or classes of creditors present and voting at the meeting, either in person or by proxy. Each class of creditor will have a separate meeting.	Yes. In a creditors' voluntary winding-up, the company shall cause a meeting of the creditors at which the resolution for voluntary winding-up is proposed. This is not required in a compulsory winding-up.
Is there an ability to bind minority dissenting creditors?	Once the court has given its sanction, the scheme shall be binding on all creditors or class of creditors. This order will only have effect upon lodgment of an office copy of the order with the registrar.	If a winding-up order is granted, all creditors will be bound by the effect of such a winding-up order. Creditors will also be bound by certain acts taken by the appointed liquidator in a voluntary winding-up.

MALAYSIA

	Scheme of arrangement (SoA)	Winding-up
COMMENCING THE PROCESS		
Who can commence?	The company itself, its members or any creditor of the company, the liquidator (if the company is being wound up) or the judicial manager (if the company is under a judicial management order).	The members or creditors of a company in a voluntary winding-up. Any creditor may present a petition in a compulsory winding-up, upon the expiry of the time limit prescribed in the statutory notice.
Is shareholders' consent required to commence proceedings?	Yes, only where the company applies to commence proceedings. Where creditors apply to commence proceedings, shareholders' consent is not required.	Yes, but only in a voluntary winding-up. Where creditors apply to commence proceedings, shareholders' consent is not required.
Is there an ability to consolidate group estates?	N/A	N/A
Is there any court involvement?	The entire process requires court involvement. Initiating a SoA requires the applicant to seek an order from the court to convene meetings of the members and various classes of creditors of the company. Any SoA that has obtained the required voting majority still needs to be approved by the court so as to be given binding effect.	There is minimal court involvement in a voluntary winding-up. A compulsory winding-up process is initiated upon presenting a winding-up petition to be heard by the court. At the hearing, the court will decide whether to allow or dismiss the petition. If no liquidator has been nominated by the petitioner, the court shall appoint an approved liquidator or official receiver as the liquidator as it deems fit. Upon the application of the liquidator, the court may order the liquidator to be released and that the company be dissolved.
Who manages the debtor?	The company and its board of directors retain control over the process.	The appointed liquidator or the official receiver.
What is the level of disclosure of the process to voting creditors?	Same as CVA.	In a voluntary winding-up, disclosure to the company's creditors is required — the company must lodge a copy of the resolution with the registrar within seven days after the meeting and circulate the notice in one widely-circulated national language newspaper and English language newspaper within 10 days following the meeting. In a compulsory winding-up, after presenting the petition to the court, the petition must be advertised once in the gazette and at least twice in any two local newspapers circulating in Malaysia. If a winding-up order is granted, this sealed winding-up order must also be advertised in two local newspapers and be published in the Federal Government Gazette.

MALAYSIA	Scheme of arrangement (SoA)	Winding-up
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	N/A	N/A
How long does it generally take for a creditor to commence the procedure?	1-3 months to apply for leave to commence court-convened meeting(s) of the creditors.	Not applicable in a voluntary winding-up. In a compulsory winding-up, it usually takes 2-3 months upon presenting the petition to obtaining a winding-up order.
EFFECT OF PROCESS		
Does the debtor remain in possession with continuation of incumbent management control?	Yes. However, the company will typically appoint a scheme manager, whose powers, duties and rights are set out in the scheme document. The existing management of the company will not necessarily be displaced.	No. Once a winding-up order is made, the company's board of directors is *functus officio* (i.e., its mandate has expired). The power and duty of running the company falls to the liquidator.
What is the stay/moratorium regime (if any)?	There is no automatic moratorium in a SoA. The company or any member or creditor of the company may apply to the court to restrain further proceedings in any action or proceedings against the company even before or contemporaneously to the application for the SoA.	**Before winding-up order is made** • At any time after the presentation of a winding-up petition and before a winding-up order has been made, the company or any creditor or contributory may, where any action or proceeding against the company is pending, apply to the court for an order to stay or restrain further proceedings in the action or proceeding, and the court may stay or restrain the action or proceeding accordingly on such terms as it thinks fit. **After winding-up order is made** • When a winding-up order has been made or an interim liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and in accordance with such terms as the court imposes.

MALAYSIA

	Scheme of arrangement (SoA)	Winding-up
Is there a provision for debtor-in-possession super priority financing?	Same as CVA.	There is no specific provision on this matter. However, liquidators can make arrangements for financing the costs of liquidation. In such cases, the financing would rank as "costs and expenses of the winding-up" alongside the liquidator's fees and ahead of all other unsecured creditors.
Can the procedure be used to implement a debt-to-equity swap?	Same as CVA.	N/A
Are third-party releases available?	Same as CVA.	There is no specific provision/restriction on this matter. It is the discretion of the receivers/liquidators to determine whether such release can be granted.
Are the proceedings recognized abroad?	Same as CVA.	Same as CVA.
Has the UNCITRAL Model Law been adopted?	No.	No.
How long, complex and expensive is the process?	This would depend on the size and complexity of the proposed scheme. Typically, this would be costly and time consuming considering the involvement of the court throughout the SoA process.	This would depend on the size and complexity of the company's assets.
Is there a mandatory set-off of mutual debts on insolvency?	Same as CVA.	Section 526 of the Companies Act 2016 provides that an account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other. However, this does not include the situation where the other party had notice at the time the sums owed became due that a meeting of creditors has been summoned or a petition for the winding-up of the company was pending.
Can a debtor continue to carry on business during insolvency proceedings?	Yes. The company and its board of directors can continue to operate throughout the process. However, any disposition or acquisition of property other than in the ordinary course of business of the company, without the leave of court, shall be void and the company and every officer shall be guilty of an offence.	No. Upon the appointment of the liquidator, all powers of the directors cease, except where the liquidator is of the opinion that continuing activities will benefit the winding-up. The liquidator is in charge of overseeing the liquidation process. The liquidator is responsible to the court and registrar throughout the winding-up process.

MALAYSIA

	Scheme of arrangement (SoA)	Winding-up
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Same as CVA.	Same as CVA.
What is the order of priority of claims?	Same as CVA.	The priority of claims in a winding-up is as follows: i. secured creditors, to the extent of the value of their collateral ii. claims by certain third parties in respect of which the company is insured and in respect of which an amount is or has been received by the company iii. preferential creditors, including certain claims in respect of employment by the company, the costs incurred by the petitioner and the liquidator's costs and expenses iv. unsecured creditors v. deferred creditors
Are there any pension liabilities?	N/A	N/A
Is it possible to challenge prior transactions?	Yes.	Yes.
COVID-19		
Is state support for distressed businesses available?	Yes, the Malaysian government has announced various stimulus packages in an effort to support businesses affected by the COVID-19 pandemic. Briefly, the key measures available for businesses are as follows: (a) **Restructuring and rescheduling of loans:** financial institutions will offer a deferment/moratorium of loan/financing repayments to individuals and small medium enterprises for a period of six months, with effect from 1 April 2020. Corporate borrowers may approach their financiers to request a similar deferment. (b) **Bank facilities for small and medium enterprises (SMEs):** SMEs (defined as (i) manufacturing firms with a sales turnover not exceeding MYR 50 million or not exceeding 200 full-time employees; or (ii) service or other sector firms with sales turnover not exceeding MYR 20 million or not exceeding 75 full-time employees) may apply to various participating banks for low/zero interest loans (e.g., Special Relief Facility, Agrofood Facility and Automation and Digitalization Facility).	

MALAYSIA

	Scheme of arrangement (SoA)	Winding-up
	(c) **MYR 3,000 grant to micro enterprises:** micro enterprises with a sales turnover of less than MYR 300,000 or less than five full-time employees registered with the Inland Revenue Board may apply for a grant of MYR 3,000. (d) **Tax-deduction for offering rent-free periods:** landlords who offer SMEs a reduction of at least 30% of the rental fee on the SME's business premises will be eligible for an income tax deduction of an equivalent amount from April to June 2020. (e) **Wage Subsidy Program:** Companies hiring employees earning MYR 4,000 and below may apply to the Malaysian Social Security Organization (PERKESO) for the Wage Subsidy Program, whereby the government will contribute MYR 600 - MYR 1,200 per employee, depending on the total number of employees of the company for three months, subject to the company meeting various eligibility criteria. (f) **Utilities discount:** there is a 15% discount on sectors adversely affected by COVID-19 (e.g., hotel operators, travel and tour agencies, shopping malls, convention centers, offices of domestic flight companies). For all other sectors, there is a 2% discount from 1 April to 30 September 2020. In addition, the government has proposed a tiered rebate on electricity bills for all domestic users in Peninsular Malaysia up to a maximum consumption rate of 600 kWh. (g) **Employer Advisory Services by the Employees' Provident Fund:** the Employees' Provident Fund board will be providing Employer Advisory Services from 15 April 2020 to provide customized advisory support services for employers, specifically with regards to the employers' portion of EPF contributions during the current economic downturn. (h) **Exemption from Human Resource Development Fund (HRDF):** companies in the manufacturing, services, mining and quarrying sector with 10 or more employees are exempt from paying levy payments to the HRDF Fund for six months starting from April 2020. The levy on foreign workers is reduced by 25% for all companies with work permits that will expire in the period from 1 April to 31 December 2020.	
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	None as at the date of this questionnaire.	None as at the date of this questionnaire, but refer to the response below.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	None as at the date of this questionnaire.	Yes. The Malaysian government has proposed to increase the threshold of indebtedness for companies "unable to pay its debts" from MYR 10,000 to MYR 50,000 until 31 December 2020 to reduce winding-up petitions against companies. The period for responding to notices of demand will be extended from 21 days to six months.

UPDATED MAY 5, 2020

MEXICO

MEXICO	Conciliation	Bankruptcy
Can you take security over all types of assets, including working capital?	No attachment or execution against the rights and/or property of the debtor can take place, except for labor claims.	Yes. This can be requested by the debtor, creditors or trustee and has to be approved by the bankruptcy judge.
What is the nature of the process?	Preserve the company by means of an agreement between the debtor and their recognized creditors. The process lasts 360 calendar days, otherwise bankruptcy is declared.	Sell the working unit, productive units and assets of the company in order to pay the recognized creditors. Likewise, the liquidation and closure of the company.

MEXICO

	Conciliation	Bankruptcy
What is the solvency requirement?	A company may be subject to insolvency proceedings when any of the following circumstances are met: • Obligations that have been due for at least 30 days and that represent at least 35% of all obligations owed by the debtor on the date on which the claim or request for insolvency is made. • The debtor does not have assets[1] to pay at least 80% of its obligations due on the date of the filing of the petition. General default on payment of obligations also exists when the debtor does not have assets to pay at least 80% of its obligations. • There is a lack or insufficiency of assets to carry out an attachment. • The debtor fails to pay its debts to two or more different creditors. • The debtor is missing or hiding, leaving no one in charge of the business so as to comply with pending obligations. • The company's business offices have been closed, leaving no one in charge of the business so as to comply with pending obligations. • The debtor carries out fraudulent or fictitious practices so as not to pay its debts. • The debtor breaches a settlement reached with its creditors under the law. • Any other analogous causes.	The declaration of bankruptcy occurs in four circumstances: • The debtor himself requests it. • The conciliator requests it and the court agrees in light of the lack of disposition on the part of the debtor or its creditors to come to an agreement. • The term for the conciliation stage and its extension periods have expired and no agreement has been reached with the recognized creditors. • The creditors request it and the debtor expressly accepts the creditors' request.
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes, the corporate domicile of the company or the place where it has its main administration. In case of branches of foreign companies, the place where it has its main establishment in Mexico. In the case of individuals, the main establishment of their business or where they have their personal domicile. This is also relevant to establish the jurisdiction of the federal court.	Yes, it is considered as "domicile" — the corporate domicile of the company or the place where it has the main administration. In case of branches of foreign companies, the place where it has its main establishment in Mexico. In the case of individuals, the main establishment of their business or where they have their personal domicile. The bankruptcy judge will be the same that acknowledged the conciliation procedure.
Is restructuring of both secured and unsecured claims possible?	Yes. Reorganization proceedings are flexible, allowing the restructure of both secured and unsecured claims. Restructure of the debt under Mexican legislation can occur during the conciliation procedure or through an insolvency procedure with a restructuring agreement.	During the bankruptcy stage, there can be no restructure of the debt. Creditors may appeal the resolution that establishes the final amount owed by the debtor.

1 Assets: (i) Cash in register and sight deposits; (ii) deposits and investments with a term not exceeding 90 days; (iii) clients and accounts receivable with a term not exceeding 90 days; and (iv) securities tradeable in relevant markets that can be sold within a maximum period of 30 days.

MEXICO

	Conciliation	Bankruptcy
Is there a classification of creditors and shareholders?	Yes, in this stage the conciliator prepares the provisional and definitive lists of creditors. Those lists must recognize the amount, categorization, priority and preference. The classification is as follows: (i) Uniquely privileged creditors; (ii) creditors with in rem guarantees; (iii) creditors with special privilege; (iv) creditors for tax and labor claims; (v) common creditors; and (vi) subordinated creditors. Shareholders are not part of the proceedings and are not classified.	Yes, the classification follows a ranking of claims and no payments will be made to creditors of one class without settling before claims of the previous class. (i) Uniquely privileged creditors; (ii) creditors with in rem guarantees; (iii) creditors with special privilege; (iv) creditors for tax and labor claims; (v) common creditors; and (vi) subordinated creditors. Shareholders are not part of the proceedings and are not classified.
Is there a requirement for voting approvals by shareholders?	Yes. In the case of legal entities that seek to be subject to an insolvency procedure, a shareholders' meeting to decide the filing is necessary to make the corresponding filing with a commercial bankruptcy court.	The bankruptcy proceedings continue after the conciliation stage before the same court. The judge declares the bankruptcy so there is no need for approval by shareholders.
Is there a requirement for voting approvals by shareholders' creditors?	Yes. In accordance with the law, the voting approval is the following in order to enter a Conciliation Agreement, and must be approved by recognized creditors that represent more than 50% of the sum of: (i) the amount recognized to all common and subordinated recognized creditors (ii) the amount recognized for those creditors with an in rem guarantee or a special privilege In cases where there are subordinated creditors (individuals/companies that hold 50% of the capital of the debtor or of the companies controlled by the debtor) that represent at least 25% of points (i) and (ii), it is necessary that the recognized creditors that represent 50% of points (i) and (ii) enter the agreement, excluding the claims in favor of subordinated creditors; in order to respect voting rights.	N/A
Is there an ability to bind minority dissenting creditors?	Mexican legislation provides that the agreement from majority creditors can be imposed to minority dissenting creditors during the conciliation stage.	During bankruptcy, some agreements or legal decisions from majority creditors can be imposed to minority dissenting creditors, e.g., the designation of interveners.
COMMENCING THE PROCESS		
Who can commence?	(i) The debtor; (ii) any creditor; (iii) the public prosecutor; (iv) the Assets and Properties Administration Institute (a company where the state is the majority stakeholder) and (v) the bankruptcy judge (indirectly, through the public prosecutor by means of a report filed with tax authorities and with the public prosecutor itself.)	

MEXICO

	Conciliation	Bankruptcy
Is shareholders' consent required to commence proceedings?	Yes, but only when the insolvency proceeding is voluntarily requested by the debtor.	No.
Is there an ability to consolidate group estates?	Commercial bankruptcy proceedings of companies that are part of one same corporate group may be accumulated, but handled in separate judicial dossiers	
Is there any court involvement?	Yes, the bankruptcy judge will oversee the conciliator's performance and, if appropriate, will authorize the execution of an agreement with the recognized creditors.	Yes, the bankruptcy judge is the director of the proceeding. They have all the powers to enforce the law; however, they are obliged to observe the established terms or deadlines, except for fortuitous events or force majeure. The non-compliance with the aforementioned obligation conveys responsibility for the judge and/or the Federal Institute of Business Reorganization Specialists.
Who manages the debtor?	The debtor may remain administrating the company (supervised by the conciliator); nevertheless, the conciliator may substitute the debtor in the administration if requested to the court.	The trustee
What is the level of disclosure of the process to voting creditors?	Public. The conciliator files a bi-monthly report to inform creditors of the status of the company. There is no special treatment for different creditors in relation to the disclosure of the conciliation procedure.	Public. The trustee must deliver a bi-monthly report to inform the financial statements, ad-vances, etc.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Small traders can only be declared in bankruptcy when they voluntarily accept the effects of the Insolvency Law. Also, state companies are excluded from the customary insolvency proceeding, except the state-owned companies incorporated as commercial companies and the majority state-owned companies. Other types of debtors, such as financial entities, are subject to their specific legislations. Also, the Mexican Institute of Social Security (IMSS) and the National Workers' Housing Fund Institute (INFONAVIT) are excluded from the insolvency proceedings.	Any entity bound to conciliation at an insolvency procedure can also be declared in bankruptcy.
How long does it generally take for a creditor to commence the procedure?	As of the filing of the request to the publication and declaration of the insolvency, it may take approximately 60-75 business days.	Immediately after concluding the conciliation stage, the judge can declare the bankruptcy

MEXICO

	Conciliation	Bankruptcy
EFFECT OF PROCESS		
Does the debtor remain in possession with continuation of incumbent management control?	The debtor may continue operating the company, although the conciliator may request the judge remove the debtor and take over the administration of the company.	No, the management of the company is undertaken by the trustee.
What is the stay/moratorium regime (if any)?	During the conciliation stage, the claims, trials and procedures against the debtor that are in progress when the declaration of insolvency is made will not be joined under the insolvency procedure. Rather, they will continue to be pursued by the debtor under the supervision of the conciliator. Creditors with in rem guarantees have the right to continue execution proceedings against the assets they received as guarantee once the judge declares that those assets are not essential for the ordinary business of the debtor. Also, other claims related to the assets of the debtor might be filed by creditors with the competent authorities. Those procedures will not be joined under the insolvency procedure.	(i) suspension of the capacity of the debtor to take actions over the property and rights that form the bankruptcy estate (ii) the order to the debtor, its administrators, managers and employees to turn over to the trustee in bankruptcy the possession and administration of the property and rights that form the bankruptcy estate (iii) the order to the debtors of the bankrupt debtor not to make payments without the authorization of the trustee, with the notice that they will make payment twice in the case of non-compliance (iv) the order to the Federal Institute of Business Reorganization Specialists (IFECOM) to appoint the conciliator or someone else as trustee in bankruptcy, for the operation of the debtor's company
Is there a provision for debtor-in-possession super-priority financing?	The law establishes super-priority claims. During the conciliation, these ranks will be considered in order to achieve a conciliation agreement between creditors. Mexican law allows DIP financings with the prior approval of the insolvency judge. Besides labor claims, the claims arising from debtor-in-possession (DIP) financing agreements have the highest ranking of claims.	The payments during the bankruptcy stage will follow the ranking established by the law. These rankings cannot change during bankruptcy.
Can the procedure be used to implement a debt-to-equity swap?	Yes, it is not forbidden by the Law, but it is subject to approval by the judge and the recognized creditors of the debtor during the conciliation period. The agreement is valid when it complies with the following: (i) it considers payment of expenses in administration of the bankruptcy estate; (ii) payment to privileged creditors; (iii) payment to creditors with in rem guarantees and with special privilege; and (iv) it contains enough reserves for payment of any claims that are pending for resolution and tax credits to be determined. All creditors must agree on changing their debt for equity, minorities cannot be forced to enter the agreement on those terms.	N/A

MEXICO

	Conciliation	Bankruptcy
Are third-party releases available?	N/A In order for an agreement to be valid, it must be entered into by the debtor and recognized creditors that represent more than 50% of the sum of: (i) the amount recognized to all common and subordinated recognized creditors (ii) the amount recognized for those creditors with an in rem guarantee or a special privilege In cases where there are subordinated creditors (related companies of the debtor) that represent at least 25% of points (i) and (ii), it is necessary that the recognized creditors that represent 50% of points (i) and (ii) enter the agreement, excluding the claims in favor of subordinated creditors; in order to respect voting rights.	N/A. The payments during the bankruptcy stage will follow the ranking established by the law. These rankings cannot change during bankruptcy.
Are the proceedings recognized abroad?	Yes. Cooperation in international proceedings applies when: (i) a foreign court requests assistance in Mexico with regard to foreign proceedings; (ii) the assistance of another country is requested in regard to proceedings that are being conducted under the law; (iii) insolvency or bankruptcy proceedings are being conducted simultaneously and with regard to the same debtor in Mexico and in a foreign country; or (iv) creditors or other interested parties located in a foreign country have an interest in initiating or joining proceedings. Likewise, the law determines the cases in which and manner by which a foreign procedure is recognized in Mexico, and also anticipates the possibility of having parallel procedures in Mexico and a foreign country, establishing specific actions to follow.	Yes.
Has the UNCITRAL Model Law been adopted?	The UNCITRAL Model Law highly influenced the Insolvency Law in Mexico. However, insolvency proceedings are expressly regulated by the Insolvency Law (Ley de Concursos Mercantiles).	N/A

MEXICO

	Conciliation	Bankruptcy
How long, complex and expensive is the process?	Conciliatory stage must be exhausted in 365 calendar days. If no agreement is reached with recognized creditors, bankruptcy stage must be opened. The payment of fees for the visitor is an initial payment before starting the proceedings. The fees of the conciliator are calculated according to certain rules established by the IFECOM. The payment of the insolvency specialists will be directly related to their performance, in accordance with the criteria determined by the IFECOM rules, particularly, considering the use and profits of the resources of the insolvency estate.	The law provides that this stage should be exhausted in a maximum term of six months to effect the sale of the bankruptcy assets; however, in the practice the time that it takes to liquidate the bankruptcy assets is substantially greater than the term provided for by law. The fees of the trustee are calculated according to certain rules established by the IFECOM. The payment of the insolvency specialists will be directly related to their performance, in accordance with the criteria determined by the IFECOM rules, particularly, considering the use and profits of the resources of the insolvency estate.
Is there a mandatory set-off of mutual debts on insolvency?	Yes. Compensation takes place when two persons or entities are debtors and creditors reciprocally and in their own right. The effect of the compensation is to extinguish the two debts, up to the amount of the lesser amount.	Yes.
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	Yes.

OTHER FACTORS

Are there any wrongful or insolvent trading restrictions and what is the directors' liability?

Acts that defraud creditors are not valid toward the bankruptcy estate.

Among those acts, the following are included:

- gratuitous acts
- acts or transfers made by the debtor with a gross undervalue or overvalue, as the case may be
- transactions entered into by the debtor with terms and conditions that significantly deviate from regular market conditions or from commercial practices
- debt remission granted by the debtor
- payment by the debtor of obligations not yet due
- discounts granted by the debtor

Except when the interested party demonstrates good faith, it is assumed that the following are acts of fraud to creditors:

- granting of guarantees or the increase of existing ones when the original obligation did not contemplate them
- payments in kind when the original obligation did not contemplate them or originally a monetary consideration was specified in the relevant contract

For debtors that are corporate entities, unless otherwise proven in good faith, it is assumed that the following acts, if taken within the claw back period, defraud creditors:

- entered into with its sole manager or board of directors, or with their respective spouses or unmarried couples [2], or with blood relatives within the fourth-degree, or relatives with no blood relationship within the second-degree, including kinship resulting from adoption.
- entered into with individuals that jointly and severally represent, directly or indirectly, at least 51% of the subscribed-for and paid-in capital of the debtor under insolvency proceedings; individuals that have decision-making powers in the shareholder's meetings; individuals that are able to appoint the majority of the members of the board of directors, or are by any other means empowered to take key decisions regarding the debtor under insolvency proceedings.
- entered into with companies that have the same administrators, members of the board of directors or principal officers as the debtor.
- acts entered into with controlled companies.

Also, directors and relevant employees, among other cases, may be liable in the following situations:

- vote in board meetings or make determinations related to the merchant's assets with a conflict of interest.
- favor a shareholder or group of shareholders to the detriment of other shareholders.
- without legitimate cause, by virtue of their employment, position or commission, they obtain an economic benefit for themselves or in favor of third parties.
- generate, disclose, publish, provide or order information knowing that it is false.

2 Mexican law regulates as "concubine" an unmarried partner that, when certain conditions are met (for instance, time together living in the same place) have, by ministry of law, rights and obligations as married couples.

MEXICO

Conciliation

Bankruptcy

What is the order of priority of claims?

The creditors are classified as follows:

- uniquely privileged creditors: funeral expenses of the debtor and expenses associated with the illness that has caused the death of the debtor
- creditors with in rem guarantees: as long as the guarantees are duly formalized in accordance to the applicable law (mortgage and pledge). *Note: creditors with in rem guarantees will receive payment of their credit with the proceeds of the sale of the mortgaged or pledged assets.
- creditors with special privilege: all those that, according to the Code of Commerce, have a special privilege or a right of withholding. *Note: these creditors will collect on the same terms as secured creditors according to the date of their credit.
- creditors for tax and labor claims. *Note: These credits will be paid after the uniquely privileged and creditors with in rem guarantees in accordance with the date of their credit.
- common creditors: those excluded from the previous cases. Their claims will be paid pro-rata regardless of the dates of their claims.
- subordinated creditors: creditors that agreed to the subordination of their claims to the common creditors, and creditors for non-in rem guarantees mentioned in articles 15, 116 and 117 of the LCM, with the exception of the controlling companies (article 15, section I, of the LCM) and individuals that exercise 50% of the capital of the debtor or of the companies controlled by the merchant (article 117, section II, of the LCM).

No payments will be made to creditors of one class without settling before claims of the previous class.

Are there any pension liabilities?

Yes. Companies can create trusts to administrate their employees' pensions. Such trusts must be reported to the bankruptcy judge and the visitor as part of the bankruptcy estate. This structure has been abused to deviate funds of companies to the detriment of creditors; thus, it is important to carefully review the terms and conditions of the trust in question to assess its actual purpose and legitimacy. If appropriate, its annulment may be pursued.

Is it possible to challenge prior transactions?

Yes. The law provides for a claw back period of 270 calendar days prior to the date on which the declaration of insolvency proceedings was issued and it can be extended up to a three-year period by the judge if acts that defraud creditors are explained and evidenced.

COVID-19

Is state support for distressed businesses available?

Yes. Federal and local governments have issued their own support programs for medium and small businesses to face the COVID-19 health emergency. Among those support programs are:

(i) "Crédito a la Palabra," a program to provide funding to micro and small businesses to support their operations and employees. This includes support of MXN 25,000 to be paid over a three-year period.

(ii) "Apoyos a empresarios solidarios," the Mexican Institute of Welfare will aid employers to pay salaries with a reduction of rates.

(iii) Bank of Mexico (Banxico) reduced its interest rate to 6.5% (a 50-point reduction) and will inject up to MXN 750 billion into the banks, with the aim of these resources being provided to companies and individuals.

(iv) Mexican Tax Administration Service (SAT) extended the period for the filing of tax declarations of individuals until 30 June (the original deadline was in April).

MEXICO

	Conciliation	Bankruptcy
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	Not as public policy; however, under Mexican Law force majeure may constitute a release of liability for the parties. However, to fully prove the existence of force majeure, the claiming parties must demonstrate that the situation was (i) external; (ii) unsurpassed; (iii) unpredictable; (iv) inevitable; and (v) beyond the control of the parties. In accordance with Decree 8/2020 issued by the Federal Judicial Council on 27 April 2020, although all judicial activities and terms are suspended, any proceedings related to interim measures in bankruptcy proceedings are considered as "urgent matters" and therefore applications on this matter should be resolved.	
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	No. The last amendment was enacted on 22 January 2020.	

UPDATED MAY 5, 2020

MOROCCO

MOROCCO	Safeguard procedure (Procédure de sauvegarde)	Receivership procedure (Redressement judiciaire)	Court-ordered liquidation (Liquidation judiciaire)
INITIAL CONSIDERATIONS			
Can you take security over all types of assets, including working capital?	Security can generally be taken over all assets, including working capital until the date of the judgment initiating safeguard proceedings.	Security can generally be taken over all assets, including working capital until the date of the judgment initiating receivership proceedings. Security taken in the pre-receivership period may be challenged. The court may annul any security made by the debtor after the date of cessation of payment (Etat de cessation de paiement).	Security can generally be taken over all assets, including working capital until the date of the judgment initiating bankruptcy proceedings. Security taken in the pre-bankruptcy period may be challenged. The court may annul any security made by the debtor after the date of cessation of payment.
What is the nature of the process?	Safeguard procedure is a legal procedure initiated by the company. It can be opened at the debtor's own initiative. Such a procedure aims at setting up a safeguard plan, submitted to the court for approval. Its purpose is to enable the company to overcome its difficulties in order to guarantee the continuation of its business, the maintenance of employment and the discharge of liabilities.	Receivership is a legal proceeding, which applies to any commercial business in a state of cessation payments (Cessation de paiement).	A judicial process that tends to the cessation of the business of the debtor, the liquidation of its assets and the distribution of the proceeds to its creditors.

MOROCCO

	Safeguard procedure (Procédure de sauvegarde)	Receivership procedure (Redressement judiciaire)	Court-ordered liquidation (Liquidation judiciaire)
What is the solvency requirement?	For a safeguard procedure to be opened, the following conditions should be met: (a) The debtor, without being in cessation of payments, is facing difficulties that they are unable to overcome; such difficulties could jeopardize the continuity of operations. (b) These difficulties could lead to the suspension of payments in the near future. Such criteria are cumulative.	For a receivership procedure to be opened, the following conditions should be met: (a) The debtor should be in a state of cessation of payments (*Etat de cessation de paiement*). A cessation of payments is established when the company is unable to meet its liabilities with its available assets. (b) The company's situation should not be irremediably compromised. Such criteria are cumulative. In this respect, please note that if the company is in: (i) a state of cessation of payments receivership; and (ii) if it appears that the company's situation is **irremediably compromised** it shall be placed into court-ordered liquidation.	The durable cessation of payments and the debtor's situation is irremediably compromised.
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes, for the recognition of a foreign proceeding. With respect to national judicial proceedings, the court of jurisdiction is that of the company's principal place of business or registered office.		
Is restructuring of both secured and unsecured claims possible?	Yes.	Yes.	N/A Court-ordered liquidation aims for the liquidation of the debtor's assets and the distribution of the proceeds to the creditors in accordance with their priority rights.

MOROCCO	Safeguard procedure (Procédure de sauvegarde)	Receivership procedure (Redressement judiciaire)	Court-ordered liquidation (Liquidation judiciaire)
Is there a classification of creditors and shareholders?	There is no classification between creditors and the company's shareholders that we are aware of. The Moroccan Commercial Code is silent in this respect. However, please note that there is a classification between creditors whose debt arose prior to the safeguard opening judgment and those whose debt arose after the safeguard opening judgement. Creditors whose debt arose after the safeguard opening judgment are paid in priority.	There is no classification between creditors and the company's shareholders that we are aware of. The Moroccan Commercial Code is silent in this respect. However, please note that there is a classification between creditors whose debt arose prior to the receivership opening judgment and those whose arose after the receivership opening judgement. Creditors whose debt arose after the receivership opening judgment are paid in priority.	N/A
Is there a requirement for voting approvals by shareholders?	The opening of a judgement request regarding the safeguard procedure must be filed by the company's legal representative and approved by the court once the criteria to trigger the procedure are met. Please note that depending on the company's corporate form, such a decision shall be discussed during general meetings/the board of directors' meetings. Thus, depending on the company's bylaws and applicable laws and regulations applicable to each corporate form, there might be a requirement for voting approval by shareholders.	The opening of a judgement request regarding the receivership must be filed by the company's legal representative and approved by the court once the criteria to trigger the procedure are met. Please note that depending on the company's corporate form, such a decision shall be discussed during general meetings/the board of directors' meetings. Thus, depending on the company's bylaws and applicable laws and regulations applicable to each corporate form, there might be a requirement for voting approval by shareholders. However, as long as the criteria set forth above are met (état de cessation de paiement), the manager shall trigger the procedure.	N/A
Is there a requirement for voting approvals by shareholders' creditors?	No.	Yes. An assembly of creditors is created, depending on the case once the receivership procedure is declared. In such a case, there are some decisions reserved to the creditor's assembly.	N/A
Is there an ability to bind minority dissenting creditors?	Yes. The solution plan approved by the court is binding on all creditors.	**Yes.** Please note that an assembly of creditors is constituted under certain circumstances following the opening judgment and some decisions are submitted to vote and reserve to the creditor's assembly vote. Furthermore, the receivership procedure suspends all creditors' claims that have arisen prior to the opening judgement.	N/A

MOROCCO

	Safeguard procedure (Procédure de sauvegarde)	Receivership procedure (Redressement judiciaire)	Court-ordered liquidation (Liquidation judiciaire)
COMMENCING THE PROCESS			
Who can commence?	The debtor can commence.	The debtor shall request the opening of receivership proceeding no later than 30 days following the date of the company's cessation of payments. The opening of such a proceeding may also be requested by one or more creditors, the public prosecutor or the court ex officio.	The debtor, one or more creditors, the public prosecutor or the court ex officio can commence.
Is shareholders' consent required to commence proceedings?	No.	**No.** However, such a situation shall be presented to the board of directors or general meetings depending on the company's corporate form. However, please note the following: 1. When the manager of the company does not, on their own initiative, redress the facts likely to compromise the company's operations ("**Facts**"), the company's auditor, if any, or a shareholder shall inform the company's management of such facts within a period of eight days starting from the date where such Facts were actually discovered/disclosed by a registered letter with acknowledgement of receipt. Such a letter should contain an invitation to redress the company's situation. 2. If the company's manager fails to comply within 15 days of receipt or if they do not personally or after deliberation by the board of directors or the supervisory board, as the case may be, achieve a positive result, they are required to have the next general meeting deliberate to rule on the matter, based on a report by the statutory auditor.	No.
Is there an ability to consolidate group estates?	N/A	Receivership proceedings may be extended to one or more other companies if there is confusion between their assets and the debtor's assets or when the debtor is a fictitious company.	Court-ordered liquidation proceedings may be extended to one or more other companies if there is confusion between their assets and the debtor's assets or when the debtor is a fictitious company.

MOROCCO

	Safeguard procedure (Procédure de sauvegarde)	Receivership procedure (Redressement judiciaire)	Court-ordered liquidation (Liquidation judiciaire)
Is there any court involvement?	Yes. The court opens and supervises the process.	Yes. The court opens and supervises the process and appoints the receiver in charge of managing debtor. The court may also order, as the case may be, the constitution of creditor assembly.	Yes. The court opens and supervises the process.
Who manages the debtor?	The court appoints a safeguard proceedings trustee.	Depending on the case, the court appoints a receiver in charge, either to: (a) monitor management operations; (b) assist the company's management; or (c) ensure totally or partially the management of the company. At any time, the court may modify the mission of the receiver at their request or of its own motion.	The court appoints a bankruptcy trustee.
What is the level of disclosure of the process to voting creditors?	N/A	When an assembly of creditors is constituted, it shall gather in order to vote on: • the recovery plan draft ensuring the continuation of the business (plan de continuation) • the restructuring plan (plan de redressement) • a modification on the purposes, means and objectives of the reorganization plan, ensuring the continuity of the business • a request to replace the appointed receiver • the transfer of one or more indispensable assets	N/A
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Public entities are subject to special legal provisions depending on their status.		
How long does it generally take a creditor to commence the procedure?	N/A Safeguard proceedings can only be requested by the debtor.	In this respect, Moroccan Commercial Code does not provide for a specific timeline. It only provides that receivership proceedings may be opened on the summons of a creditor regardless of the nature of its claim.	Upon the establishment of the cessation of payment. No time limit is specified for the creditor.

MOROCCO

	Safeguard procedure (Procédure de sauvegarde)	Receivership procedure (Redressement judiciaire)	Court-ordered liquidation (Liquidation judiciaire)
EFFECT OF PROCESS			
Does the debtor remain in possession with the continuation of incumbent management control?	Yes. However, the disposal acts and the execution of the safeguard plan are submitted to the control of the trustee appointed by the court.	Yes. However, depending on the case, the manager is either assisted or supervised by the receiver appointed by court. Indeed, as mentioned above, depending on the case, the court appoints a receiver in charge, either to: (a) monitor management operations; (b) assist the company's management; or (c) ensure totally or partially the management of the company. At any time, the court may modify the mission of the receiver at their request or of its own motion.	No. The debtor is divested of the management. The rights and actions of the debtor concerning its assets are exercised by the trustee.
What is the stay/moratorium regime (if any)?	N/A	Once the receivership procedure is opened following rules applies: 1. continuity of operations 2. continuation of ongoing contracts under the unique request of the syndic; if the receiver does not exercise the option to continue the contract, non-performance may give rise to damages, the amount of which shall be declared as a liability. Otherwise, they shall be paid in priority to all other debts, whether or not accompanied by privileges or securities, with the exception of the following: • creditors who have consented to a new cash contribution to company in order to ensure its continuation in the framework of a conciliation procedure • debts that have arisen regularly after the judgment initiating the safeguard proceedings and that are essential to the continuation of those proceedings or to the activity during the period of preparation of an adequate solution (safeguard, reorganization, continuation, court ordered liquidation etc.).	N/A

MOROCCO	Safeguard procedure (Procédure de sauvegarde)	Receivership procedure (Redressement judiciaire)	Court-ordered liquidation (Liquidation judiciaire)
		3. suspension and prohibition of any legal action to be intended by creditors whose claims arose prior to the opening judgment and subsequent suspension of related delays 4. prohibition of any enforcement action by creditors on both movable and immovable assets 5. claims arising regularly after the judgment initiating the receivership and that are essential to the continuation of this process or to the activity of the company during the period of shall be paid on their due dates during the period of the preparation as the case may be of the reorganization or continuation plan 6. prohibition from paying any claim arising prior to the opening of the receivership procedure 7. receivership procedures stops the course of legal and conventional interest rates as well as all interest for late payment and surcharges until the date of the judgement adopting the safeguard or continuation plan	
Is there a provision for debtor-in-possession super priority financing?	No	No. Moroccan Commercial Code does not refer to such a provision.	No
Can the procedure be used to implement a debt-to-equity swap?	N/A	N/A	N/A
Are third-party releases available?	N/A in Morocco.	N/A in Morocco.	N/A in Morocco.
Are the proceedings recognized abroad?	Yes, subject to the commitments provided for in the relevant international treaties and conventions ratified by Morocco and the signatory country.		

MOROCCO

	Safeguard procedure (Procédure de sauvegarde)	Receivership procedure (Redressement judiciaire)	Court-ordered liquidation (Liquidation judiciaire)
Has the UNCITRAL Model Law been adopted?	No.	No.	No.
How long, complex and expensive is the process?	The court sets a duration for the execution of the safeguard plan, which may not exceed five years. The proceedings fees are fixed by the court.	This depends on the economic situation of the company. In this respect, please note that a receivership is declared only if it appears that the company's situation is not irremediably compromised. Otherwise, the company shall be placed into court-ordered liquidation proceedings.	The duration of the proceedings depends on the situation of the debtor, the involved parties and the procedural acts to be carried out. It can take several years. The proceedings fees are fixed by the court.
Is there a mandatory set-off of mutual debts on insolvency?	N/A. Moroccan Commercial Code does not refer to such issue.	N/A. Moroccan Commercial Code does not refer to such issue.	N/A. Moroccan Commercial Code does not refer to such issue.
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	Yes. A major concern of receivership procedure is business continuity. In this respect, article 586 of Moroccan Commercial Code provides that the company's activity is pursued after the opening of the receivership procedure.	Where the general interest or the interest of creditors requires the continuation of business, the court may authorize such a continuation for a determined period. However, the management is ensured by the trustee.
OTHER FACTORS			
Are there any wrongful or insolvent trading restrictions, and what is the directors' liability?	N/A	N/A. Please note however that the company's managers may be held responsible for their mismanagement (*faute de gestion*) if it is proven is proven that the mismanagement itself led to this situation.	In the event of a shortfall in assets, the court may, in case of mismanagement that contributed to the shortfall, decide that the shortfall shall be borne by some or all of the directors.

MOROCCO

	Safeguard procedure (Procédure de sauvegarde)	Receivership procedure (Redressement judiciaire)	Court-ordered liquidation (Liquidation judiciaire)
What is the order of priority of claims?	Claims that arise regularly after the judgment initiating the safeguard proceedings, which are essential to the continuation of the proceedings or to the activity of the company during the period of preparation of the solution, are paid on their due dates. Failing this, they are paid in priority to all other secured and unsecured claims.	There is a classification between creditors whose debt arose prior to the receivership opening judgment and those who arose after the receivership opening judgement. Claims that actually arose after the receivership and that are essential to the continuation or to the activity of the company during the period of the "solution preparation" (preparation of either the continuation plan or the redress plan) are paid on their due dates. Failing this, they are prioritized over all other secured and unsecured claims. Indeed, the principle in itself is the prohibition of any legal action that may arise. Debts that arose post-judgment are paid and others are paid in the function of the continuation/redress plan presented and validated on court.	The order of priority in bankruptcy proceedings is extremely complicated given the many different types of liens (i.e., lien of employees, public creditors, secured claims, unsecured claims, etc.). A case-by-case analysis is necessary.
Are there any pension liabilities?	Mandatory pension plans are managed by public institutions. Thus, insolvency proceedings of an employer would not affect pension provisions.		
Is it possible to challenge prior transactions?	No.	No. Prior transactions cannot be challenged. Please note that the principle goals under receivership proceedings are: • continuity of operations/company's business • prohibition of creditors' legal actions with respect to any claims that have arisen prior to the receivership opening judgment • receivership procedures stops the course of legal and conventional interest rates as well as all interest for late payment and surcharges until the date of the judgement adopting the safeguard or continuation plan	The judgment initiating the court-ordered liquidation sets the date of cessation of payments, which may not be more than 18 months before the date of the initiation of the proceedings. Acts performed free of charge by the debtor after the date of cessation of payments are null and void. The court may also annul such acts done in the six months preceding the date of cessation of payments. In addition, the court may annul any act, payment or provision of guarantees or securities made by the debtor after the date of cessation of payments.

MOROCCO

	Safeguard procedure (Procédure de sauvegarde)	Receivership procedure (Redressement judiciaire)	Court-ordered liquidation (Liquidation judiciaire)
COVID-19			
Is state support for distressed businesses available?	Yes. However, such measures do not concern the insolvency regime. The state has set up several aid schemes for the benefit of the companies affected by the COVID-19 pandemic: • The exceptional cash credit guarantee for the benefit of companies impacted by COVID-19 crisis with a turnover not exceeding MAD 500 million. • The implementation of a zero interest rate credit (MAD 15,000) for self-entrepreneurs impacted by COVID-19 crisis, refundable over a period of three years with a grace period of one year. • A derogatory accounting treatment to amortize the grants and charges relating to the period of the state of health emergency over five years.		
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	With the exception of criminal claims and summary proceedings, all judicial claims and the time limits relating thereto are suspended until the end of the state of health emergency scheduled for 20 May 2020. The COVID-19 pandemic will likely be considered as force majeure event exempting from liability. It is generally declared as such for public procurement contracts, subject to a case-by- case study.		
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	No.	No.	No.

UPDATED MAY 5, 2020

PERU

PERU	Preventive insolvency proceedings	Ordinary insolvency proceedings
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Yes. Non-bankruptcy law applies.	Yes. If granting security is not part of the ordinary course of business, waiting until the creditors' meeting is in place is required — it will approve the transaction.
What is the nature of the process?	At the debtor's request, creditors are gathered with the mediation of the bankruptcy authority (El Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI)) and a global refinance agreement ("**AGR**") is proposed by the debtor to the creditors' meeting. The AGR is either approved or rejected and the proceedings conclude with the decision.	At the debtor's or creditors' request, creditors are gathered to take control over the debtor (if an entity) or its assets (if an individual) and decide between restructuring and liquidating. The creditors' meeting assumes the role of the shareholders' meeting (or equivalent body) and the proceedings do not conclude until the restructured debts are fully paid (restructuring) or all of the debtor's assets are sold and debts are paid considering the legal order of preference (liquidation). If the debts are not fully paid, the liquidator will require a judicial declaration of the debtor's bankruptcy.
What is the solvency requirement?	The debtor must (still) be solvent. It must not be in any of the following situations: a. more than one-third of its debts are due for payment for more than 30 days b. net worth is lower than two-thirds of the paid-in capital	Voluntary proceedings: a. more than one-third of its debts are due for payment for more than 30 days b. net worth is lower than two-thirds of the paid-in capital Involuntary proceedings: The petitioner(s) must hold a claim for more than 50 tax units (in 2020, approximately USD 65,000) that is due for payment for 30 days and is enforceable.

PERU

	Preventive insolvency proceedings	Ordinary insolvency proceedings
Is there a requirement to demonstrate COMI ("centre of main interests")?	No. Domiciled debtors are eligible to file. Entities incorporated in the country are considered domiciled. Local branches of foreign entities are also eligible.	No. Domiciled debtors can be subject to proceedings. Entities incorporated in the country are considered domiciled. Local branches of foreign entities are also eligible. Overseas insolvencies: Local ancillary proceedings can be commenced for assets located in Peru as a consequence of the prior commencement of the main proceedings in the applicable jurisdiction.
Is restructuring of both secured and unsecured claims possible?	Yes.	Yes.
Is there a classification of creditors and shareholders?	Creditors are classified (labor, alimony, secured, tax and unsecured) but such classification is mainly relevant if the preventive insolvency proceedings turn into ordinary insolvency proceedings. Generally, there is flexibility for classifying credits for purposes of payment under the AGR, provided that there is no unfair discrimination or violation of any law. Shareholders are not part of the proceedings and are not classified.	Creditors are classified as labor, alimony, secured, tax and unsecured. This classification determines the order of payment in case of liquidation. In the case of restructuring, generally, there is flexibility for classifying credits for the purposes of payment under the restructuring plan (provided that there is no unfair discrimination or violation of any law), but certain limitations based on the classification apply (e.g., at least 30% of the annual payments must be made to labor creditors). Shareholders are not part of the proceedings and are not classified (but have certain rights that must be respected by the creditors' meeting, such as preemptive rights in case of capital increase).
Is there a requirement for voting approvals by shareholders?	Shareholders have no voting rights.	Shareholders have no voting rights.
Is there a requirement for voting approvals by shareholders' creditors?	If creditors connected to the debtor represent more than 50% of the registered claims, the AGR must be approved by the creditors' meeting in separate votes: a. in the first call, more than 66.6% of the registered claims held by connected creditors and more than 66.6% of the other registered claims b. in the second call, more than 66.6% of the claims held by the attending connected creditors and more than 66.6% of the registered claims held by other attending creditors If creditors connected to the debtor do not represent more than 50% of the registered claims, only one vote is required (with the same majority requirements).	If creditors connected to the debtor represent more than 50% of the registered claims, the restructuring plan or liquidation agreement (and their amendments) must be approved by the creditors' meeting in separate votes: a. in the first call, more than 66.6% of the registered claims held by connected creditors and more than 66.6% of the other registered claims b. in the second call, more than 66.6% of the claims held by the attending connected creditors and more than 66.6% of the registered claims held by other attending creditors If creditors connected to the debtor do not represent more than 50% of the registered claims, only one vote is required (with the same majority requirements).

PERU

	Preventive insolvency proceedings	Ordinary insolvency proceedings
Is there an ability to bind minority dissenting creditors?	Yes. Decisions are binding for dissenting creditors.	Yes. Decisions are binding for dissenting creditors.
COMMENCING THE PROCESS		
Who can commence?	The debtor.	The debtor or one or more creditors.
Is shareholders' consent required to commence proceedings?	Depending on the debtor's bylaws, a shareholders' resolution could be required for filing the request.	Voluntary proceedings: Depending on the debtor's bylaws, a shareholders' resolution could be required to file the request. Involuntary proceedings: No.
Is there an ability to consolidate group estates?	No.	No.
Is there any court involvement?	The final decision of the bankruptcy authority's second instance (INDECOPI's Tribunal) can be challenged in court. Clawback provisions are only enforceable in court.	The final decision of the bankruptcy authority's second instance (INDECOPI's Tribunal) can be challenged in court. Clawback provisions are only enforceable in court.
Who manages the debtor?	The commencement of the proceedings does not require a change in management.	Once the creditors' meeting is in place, it assumes control over the management. If a restructuring is agreed, the creditors' meeting can maintain the same management, maintain some managers and appoint new ones, or appoint a new management. If liquidation is agreed, it must appoint a liquidator registered before INDECOPI.
What is the level of disclosure of the process to voting creditors?	The Bankruptcy Law details the documentation that the debtor must file with its petition, including financial statements, financing sources, payroll, liabilities, assets and encumbrances, and accounts receivable. Such information is available for registered creditors.	The Bankruptcy Law details the documentation that the debtor must file with its petition or when served with a creditor's petition, including financial statements, financing sources, payroll, liabilities, assets and encumbrances, and accounts receivable. Such information is available for registered creditors. The information required for each decision must be provided in advance to the corresponding session of the creditors' meeting.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Governmental entities, private pension fund managers, entities of the financial system and entities of the insurance system are governed by their respective laws. Trusts are excluded and their liquidation is subject to the corresponding trust agreement.	Governmental entities, private pension fund managers, entities of the financial system and entities of the insurance system are governed by their respective laws. Trusts are excluded and their liquidation is subject to the corresponding trust agreement.

PERU

	Preventive insolvency proceedings	Ordinary insolvency proceedings
How long does it generally take for a creditor to commence the procedure?	N/A	First instance decision (if the debtor opposes): 4.5 months Second instance decision (if the debtor challenges): 5 months Total time until the commencement of the proceeding is made public (and the insolvency effects occur): 1 year If the debtor does not oppose the petition, the whole process up to the publication could take 4.5 months.
EFFECT OF PROCESS		
Does the debtor remain in possession with the continuation of incumbent management control?	Yes.	No. Continuation of incumbent management depends on the decision of the creditors' meeting.
What is the stay/moratorium regime (if any)?	In its petition, the debtor can request an automatic stay (from the date the proceedings are made public in INDECOPI's Bankruptcy Newsletter). If the automatic stay is requested and the creditors' meeting rejects the AGR, more than 50% of the registered claims or attending claims in the said creditors' meeting can agree the immediate commencement of ordinary insolvency proceedings.	An automatic stay applies from the date the proceedings are made public (in INDECOPI's Bankruptcy Newsletter), prohibiting creditors from attempting to collect prepublication debts or seizing assets.
Is there a provision for debtor-in-possession super priority financing?	No, but creditors can approve super priorities in the AGR. If the debtor is later subject to liquidation, legal priorities apply and enforcing priorities can be difficult.	The debtor does not remain in possession. Creditors can approve super priorities in the restructuring plan. If the debtor is later subject to liquidation, legal priorities apply and enforcing priorities can be difficult. Liquidation expenses (including those required to ensure a liquidation as a going concern) are preferential over any category of claim.
Can the procedure be used to implement a debt-to-equity swap?	No.	Yes. The creditors' meeting can approve the capitalization of commercial claims (not labor or tax), but shareholders' preemptive rights must be respected.
Are third-party releases available?	In accordance with the terms of the AGR.	In accordance with the terms of the restructuring plan or liquidation agreement.

PERU

	Preventive insolvency proceedings	Ordinary insolvency proceedings
Are the proceedings recognized abroad?	N/A	There are applicable treaties with only a few countries.
Has the UNCITRAL Model Law been adopted?	No.	No.
How long, complex and expensive is the process?	It is a short process in practice because it only seeks to collectively renegotiate payment with creditors and there is a limited time for negotiation. If the AGR is either approved or rejected, the proceeding ends. Administrative fees are not material, but advisory expenses can be relevant.	Proceedings are usually long because they last until the restructured debts are fully paid (restructuring) or all of the debtor's assets are sold and debts are paid considering the legal order of preference (liquidation). This can take several years and there is no legal limit. Administrative fees are not material, but advisory expenses can be relevant.
Is there a mandatory set-off of mutual debts on insolvency?	No. If requested by the debtor, creditors are generally not able to set-off as a consequence of the automatic stay (their claims are not enforceable). Set-off is prohibited for the debtor from filing up to when the creditors' meeting is in place. Set-offs made in that period or within one year prior to filing can be subject to clawback provisions.	No. Creditors are generally not able to set off as a consequence of the automatic stay (their claims are not enforceable). Set-off is prohibited for the debtor from filing up to when the creditors' meeting is in place. Set-offs made in that period or within one year prior to filing can be subject to clawback provisions.
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	Yes, until the creditors' meeting is in place. If restructuring is agreed, it must continue carrying on business. If liquidation is agreed, it must stop carrying on business when the liquidation agreement is approved, except when liquidation as a going concern is agreed.

PERU

	Preventive insolvency proceedings	Ordinary insolvency proceedings
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	N/A	The board of directors must call a shareholders' meeting to inform them of an insolvency situation, but it is not mandatory to commence insolvency proceedings. There is a provision that states that the board of directors is obligated to "call the creditors" and request "if applicable" a "declaration of insolvency" if the company's net worth is negative (there are not enough assets to pay liabilities). Having a net worth lower than two-thirds of the paid-in capital is a dissolution cause. This does not change the company's capacity but it triggers a special liability regime for all those that act on behalf of the company (only if damages occur).
What is the order of priority of claims?	N/A	The following order of priority applies to payments under liquidation: 1. labor claims 2. alimony 3. secured claims 4. tax claims 5. unsecured claims Under a restructuring, a different priority can be agreed in the restructuring plan, but labor and tax claims are subject to certain protections.
Are there any pension liabilities?	Unpaid contributions to pension funds are part of the debts subject to the proceedings and are considered labor claims.	Unpaid contributions to pension funds are part of the debts subject to the proceedings and are considered labor claims.
Is it possible to challenge prior transactions?	Yes (judicially), if they: (i) took place in the year prior to filing; (ii) were out of the ordinary course of business; and (iii) were detrimental for the creditors' ability to collect.	Yes (judicially), if they: (i) took place in the year prior to filing; (ii) were out of the ordinary course of business; and (iii) were detrimental for the creditors' ability to collect.

PERU

	Preventive insolvency proceedings	Ordinary insolvency proceedings
COVID-19		
Is state support for distressed businesses available?	Reactiva Perú Program: Businesses with certain risk ratings and without material tax debts (in the process of collection) can obtain private banking loans of up to PEN 10 million, secured by the government (coverage between 80% and 98% depending on the amount of the loan), to address short-term payments and obligations with their employees and suppliers. In case of insolvency and foreclosure of the guarantee, the debt before the government would not be part of the insolvency proceedings.	Reactiva Perú Program: Businesses with certain risk ratings and without material tax debts (in the process of collection) can obtain private banking loans of up to PEN 10 million, secured by the government (coverage between 80% and 98% depending on the amount of the loan), to address short-term payments and obligations with their employees and suppliers. In case of insolvency and foreclosure of the guarantee, the debt before the government would not be part of the insolvency proceedings.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	No.	No.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	The Congress of Peru delegated legislative powers to the executive for 45 days so it could issue regulations related to the bankruptcy system to reduce the impact of COVID-19 and to promote economic recovery. No regulations have yet been issued.	The Congress of Peru delegated legislative powers to the executive for 45 days so it could issue regulations related to the bankruptcy system to reduce the impact of COVID-19 and to promote economic recovery. No regulations have yet been issued.

UPDATED MAY 5, 2020

PHILIPPINES

PHILIPPINES

Court-supervised rehabilitation | **Liquidation** | **Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)**

INITIAL CONSIDERATIONS

Can you take security over all types of assets, including working capital?

Yes, subject to certain conditions. Generally, property acquired after the execution of a pledge or mortgage cannot be the subject of the subsisting pledge or mortgage because Philippine law requires that the pledger or mortgagor be the absolute owner of the pledged or mortgaged property at the time of the security's execution. However, Philippine law recognizes the validity of undertakings to extend the coverage of pledges or mortgages on after-acquired property, subject to the execution of the required supplemental security documentation.

By way of exception, a chattel mortgage may be constituted over goods in retail stores. In such case, goods acquired after such constitution, in renewal of, or in substitution for, the mortgaged goods or inventory, are deemed to be covered by the chattel mortgage if provided for in the chattel mortgage instrument.

Under the Republic Act No. 11057 or the Personal Property Security Act (PPSA), security interests may be extended to cover future property, but the security interest in such future property is created only when the grantor acquires rights in it or the power to encumber it.

Security may be created over working capital under the PPSA, since the law provides that a security interest may be created over a deposit account. It should be noted, however, that while the PPSA entered into force on 18 September 2018, the implementation or full effectivity of the law (including its provisions intended to repeal previous legislation on security agreements involving personal or movable property) is widely viewed as conditioned upon the registry being established and operational. As of date, the electronic registry provided under the PPSA is not yet operational.

PHILIPPINES

	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
What is the nature of the process?	The proceedings are in rem in nature. Jurisdiction over all affected or interested persons will be deemed acquired upon publication of the notice of the commencement of the proceedings in any newspaper of general circulation in the Philippines, in the manner prescribed under applicable rules of procedure. The proceedings will be conducted in a summary and non-adversarial manner and in accordance with applicable rules of procedure.		Pre-negotiated rehabilitation and out-of-court restructuring agreements (OCRAs) are essentially private and consensual among the relevant parties and have the effect of a rehabilitation plan, provided that they meet the requirements of the law. Parties may seek court assistance for the implementation or execution of OCRAs. In such cases where resort to court is allowed, the proceedings will be conducted in a summary and non-adversarial manner and in accordance with applicable rules of procedure.
What is the solvency requirement?	In general, a debtor is considered solvent when its financial condition generally allows it to pay its debts or liabilities as they fall due in the ordinary course of business, or in the pursuit of the debtor's business operations on ordinary business terms. A debtor will also be considered solvent when its assets are greater than its liabilities, which include all monetary claims against the debtor, even stockholder's advances that have been recorded in the debtor's audited financial statements as advances for future subscriptions.		
Is there a requirement to demonstrate COMI ("centre of main interests")?	In general, no. There is a disputable presumption that the debtor's registered office, or habitual residence, in the case of an individual, is the center of the debtor's main interests, provided that a petition for recognition is accompanied by (a) a certified copy of the order commencing the foreign proceeding and appointing the foreign representative, or (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative.		
Is restructuring of both secured and unsecured claims possible?	Yes, subject to the non-diminution of the rights of secured creditors.	Yes. A liquidation order issued by a court will not affect the right of a secured creditor to enforce its lien, subject to the secured creditor's waiver of rights under such lien in order to prove its claim in the liquidation proceedings and share in the distribution of the assets of the debtor.	Yes, as long as this is stipulated and agreed upon by the relevant parties.
Is there a classification of creditors and shareholders?	Yes. Classes of creditors include: (a) secured creditors; (b) unsecured creditors; (c) trade creditors and suppliers; and (d) employees of the debtor. The establishment of the classes of voting creditors are indicated in the rehabilitation plan. Financial rehabilitation and insolvency law in the Philippines does not provide for special distinctions among shareholders beyond those already recognized under existing law, such as the preference accorded to preferred shareholders in the distribution of corporate assets in case of liquidation.		

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	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
Is there a requirement for voting approvals by shareholders?	Yes. An insolvent debtor may commence voluntary proceedings for court-supervised rehabilitation when approved by (a) in case of a sole proprietorship, the owner; (b) in case of a partnership, a majority of the partners; or (c) in case of a corporation, a majority vote of the board of directors or trustees and authorized by the vote of the stockholders representing at least two-thirds of the outstanding capital stock or, in case of a non-stock corporation, by the vote of at least two-thirds of the members, in a stockholders' or members' meeting duly called for the purpose.	Yes. An insolvent debtor may commence voluntary liquidation proceedings when approved by a majority vote of the board of directors or trustees and authorized by the vote of the stockholders representing at least two-thirds of the outstanding capital stock or, in case of a non-stock corporation, by the vote of at least two-thirds of the members, in a stockholders' or members' meeting duly called for the purpose.	Financial rehabilitation and insolvency law in the Philippines does not expressly impose a threshold for shareholder voting approval in out-of-court rehabilitation. However, depending on the nature of the rehabilitation or restructuring agreement and whether the same entails a sale of all or substantially all of the assets of the insolvent debtor, Philippine law requires the approval of stockholders representing at least two-thirds of the outstanding capital stock of the corporation or, in case of a non-stock corporation, the approval of at least two-thirds of its members. Such approval must be signified by means of voting in a stockholders' or members' meeting duly called for the purpose.
Is there a requirement for voting approvals by shareholders creditors?	Yes. The rehabilitation receiver will notify the creditors and stakeholders once the rehabilitation plan is ready for examination. Within 20 days from notification, the rehabilitation receiver will convene the creditors, either as a whole or per class, for voting on the approval of the rehabilitation plan. The rehabilitation plan will be deemed rejected unless approved by all classes of creditors whose rights are adversely modified or affected by the rehabilitation plan. The rehabilitation plan is deemed to have been approved by a class of creditors if members of the said class holding more than 50% of the total claims of the said class vote in favor of the rehabilitation plan. The votes of the creditors will be based solely on the amount of their respective claims based on the registry of claims submitted by the rehabilitation receiver.	Yes. However, only creditors who have filed their claims within the period set by the court, and whose claims are not barred by the statute of limitations, will be allowed to vote in the election of the liquidator. A secured creditor will not be allowed to vote, unless they: (a) waive their security or lien; or (b) have the value of the property subject of their security or lien fixed by agreement with the liquidator, and are admitted for the balance of their claim.	Yes. Pre-negotiated rehabilitation The pre-negotiated rehabilitation plan must be endorsed or approved by creditors holding at least two-thirds of the total liabilities of the debtor, including secured creditors holding more than 50% of the total secured claims of the debtor and unsecured creditors holding more than 50% of the total unsecured claims of the debtor. OCRA The agreement must be approved by (a) creditors representing at least 67% of the secured obligations of the debtor; (b) creditors representing at least 75% of the unsecured obligations of the debtor; and (c) creditors holding at least 85% of the total liabilities, secured and unsecured, of the debtor.

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	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
Is there an ability to bind minority dissenting creditors?	Yes.		
COMMENCING THE PROCESS			
Who can commence?	Court-supervised rehabilitation proceedings may be either (a) voluntary, as commenced by the filing of a verified petition by the debtor, or (b) involuntary, as commenced by the filing of a verified petition by a creditor or group of creditors with an aggregate claim of at least PHP 1 million (approximately USD 20,000) or at least 25% of the subscribed capital stock or partners' contributions, whichever is higher, of the debtor.	Liquidation proceedings may be either (a) voluntary, as commenced by the filing of a verified petition by the debtor, or (b) involuntary, as commenced by the filing of a verified petition by three or more creditors the aggregate of whose claims is at least PHP 1 million (approximately USD 20,000) or at least 25% of the subscribed capital stock or partner's contributions of the debtor, whichever is higher.	Pre-negotiated rehabilitation plan An insolvent debtor, by itself or jointly with any of its creditors, may file a verified petition with the court for the approval of a pre-negotiated rehabilitation plan. OCRA The process is commenced by the approval of (a) the debtor; (b) creditors representing at least 67% of the secured obligations of the debtor; (c) creditors representing at least 75% of the unsecured obligations of the debtor; and (d) creditors holding at least 85% of the total liabilities, secured and unsecured, of the debtor.
Is shareholder's consent required to commence proceeding?	Yes, if voluntarily commenced by the debtor.		Generally yes, depending on the nature of the rehabilitation or restructuring agreement, and whether the same entails the sale of all or substantially all of the assets of the insolvent debtor.
Is there an ability to consolidate group estates?	Yes, the assets and liabilities of a debtor may be commingled or aggregated with a related enterprise owned or controlled directly or indirectly by the same interests and upon compliance with the following: (a) the commingling of the assets and liabilities of the debtor and related enterprise was done prior to the commencement of the proceedings; (b) the debtor and the related enterprise have common creditors and it will be more convenient to treat them together rather than separately; (c) the related enterprise voluntarily accedes to join the debtor and commingle its assets and liabilities with the debtor's; and (d) the consolidation of assets and liabilities of the debtor and the related enterprise is beneficial to all concerned and promotes the objectives of rehabilitation.		

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	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
Is there any court involvement?	Yes. In general, the court supervises the entire process.		Yes. Pre-negotiated rehabilitation plan The court supervises the process and ultimately approves the pre-negotiated rehabilitation plan. OCRA The parties may apply for court assistance for the execution or implementation of the agreement.
Who manages the debtor?	Unless ordered otherwise by the court, the management of the debtor will remain with the existing management. The court may displace the existing management and appoint and direct the rehabilitation receiver or management committee to assume the powers of management upon a showing of (a) actual or imminent danger of dissipation, loss, wastage, or destruction of the debtor's assets or properties; (b) paralysis of the business operations of the debtor; or (c) gross mismanagement, fraud or wrongful conduct on the part of the debtor's existing management.	The liquidator, for the limited purpose of fulfilling their duties and obligations.	This may be subject to the parties' agreement.

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	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
What is level of disclosure of process to voting creditors?	Relevant information, such as the assets, liabilities and financial reports, among others, are required to be attached to the petition to be filed with the court. Such information must also be furnished or disclosed to creditors and interested parties. The rehabilitation receiver will have the duty and responsibility to submit a status report on the rehabilitation proceedings every quarter/as may be required by the court/upon motion of any creditor/as provided in the rehabilitation plan.	Relevant information, such as the assets, liabilities and financial reports, among others, are required to be attached to the petition to be filed with the court. Such information must also be furnished or disclosed to creditors and interested parties. The liquidator will make and keep a record of all monies received and all disbursements made by them or under their authority as liquidator. They will submit a quarterly report to the court, which will be made available to all interested parties. The liquidator will also submit such reports as may be required by the court from time to time, as well as a final report at the end of the liquidation proceedings.	Pre-negotiated rehabilitation plan Relevant information, such as the assets, debts and the pre-negotiated rehabilitation plan, among others, are required to be attached to the petition to be filed with the court. Such information must also be furnished or disclosed to creditors and interested parties. OCRA The OCRA and, consequently, the availability of information or documents, are subject to the negotiation of the parties. The notice of the OCRA is required to be published once a week for at least three consecutive weeks in a newspaper of general circulation in the Philippines. The salient provisions of the OCRA, including the number of secured/unsecured/total creditors that approved the OCRA, must be included in the information published.
What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?	Financial rehabilitation and insolvency law in the Philippines does not cover banks, insurance companies and pre-need companies. For purposes of financial rehabilitation and insolvency, (a) banking institutions and quasi-banks under the direct supervision of the Bangko Sentral ng Pilipinas (BSP), the Philippines' central bank, are governed by Republic Act No. 7653 or the New Central Bank Act, the Manual of Regulations for Banks (MORB), while non-banks with quasi-banking functions and trust entities are governed by the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI); (b) insurance companies are governed by Republic Act No. 10607 (Amended Insurance Code); and (c) pre-need companies are covered by Republic Act No. 9829 (Pre-Need Code). The Supreme Court also recently enacted the Rules on the Liquidation of Banks on 18 February 2020, which applies to banks closed and placed under liquidation by the BSP Monetary Board pursuant to relevant law.		
How long does it generally take for a creditor to commence the procedure?	A creditor may commence the procedure any time so long as the requirements/grounds are present.		N/A. These proceedings are commenced by the debtor/jointly with the debtor.

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	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
EFFECT OF PROCESS			
Does debtor remain in possession with continuation of incumbent management control?	Yes, the debtor remains in possession with the continuation of incumbent management control. However, the court may appoint and direct the rehabilitation receiver to assume the powers of the management of the debtor or appoint a management committee that will undertake the management of the debtor, if there is clear and convincing evidence of any of the following circumstances: • actual or imminent danger of dissipation, loss, wastage, or destruction of the debtor's assets or other properties • paralysis of the business operations of the debtor • gross mismanagement, or fraud, or other wrongful conduct on the part of the debtor	No, upon the issuance of a liquidation order, the juridical debtor is considered dissolved and its juridical existence is terminated. The liquidator is charged with winding up the business of the debtor.	Yes, the debtor remains in possession with the continuation of incumbent management control.

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	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
What is the stay/moratorium regime (if any)?	If the court finds a petition sufficient, it will issue a commencement order that includes a stay or suspension order. The latter will: • suspend all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor • suspend all actions to enforce any judgment, attachment, or other provisional remedies against the debtor • prohibit the debtor from selling, encumbering, transferring, or disposing in any manner of its properties except in the ordinary course of business • prohibit the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business • prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date, except as may be provided therein	The court will issue a liquidation order that: • prohibits payments by the debtor and the transfer of any property by the debtor • directs all creditors to file their claims with the liquidator within the period set • disallows a separate action for the collection of an unsecured claim and all such actions already pending will be transferred to the liquidator for them to accept and settle or contest • disallows foreclosure proceedings for a period of 180 days	With respect to a pre-negotiation rehabilitation plan, if the court finds the petition sufficient it will issue a stay or suspension order with the same effects as in court-supervised rehabilitation. With respect to OCRAs, the parties may agree upon a "standstill period" pending negotiation. The effects of the standstill period will depend upon the agreement of the parties. The period will be effective against the contracting parties and other creditors, provided: • such agreement is approved by creditors representing more than 50% of the total liabilities of the debtor • notice thereof is published in a newspaper of general circulation in the Philippines once a week for two consecutive weeks • the standstill period does not exceed 120 days
Is there a provision for debtor in possession super priority financing?	There is no specific provision on debtor-in-possession super priority financing. However, an entity undergoing rehabilitation proceedings is permitted to incur new obligations to finance its rehabilitation, which may include a loan. These obligations are "administrative expenses." Administrative expenses are made a priority because, unlike other obligations subject to a stay and suspension order, they remain payable as they fall due.	None.	There is no specific provision on debtor-in-possession super priority financing. There is no prohibition under the law. Thus, creditors may all choose to treat a debtor-in-possession claim as an ultimate priority and agree to it being superior to their own claims.

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	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
Can procedure be used to implement debt-to-equity swap?	Yes, debt-to-equity swap is one of the modes that may be implemented to rehabilitate the debtor.	No.	Yes, debt-to-equity swap is one of the modes that may be implemented to rehabilitate the debtor.
Are third party releases available?	Yes. Generally, third parties such as officers, directors and shareholders are not liable for a corporate debtor's debts.		
Are the proceedings recognised abroad?	This will depend on the jurisdiction in which recognition is applied for.		
Has the UNCITRAL Model Law been adopted?	Yes. The UNCITRAL Model Law on Cross-Border Insolvency is adopted in Republic Act No. 10142 or the Financial Rehabilitation and Insolvency Act (FRIA).		
How long, complex and expensive is the process?	The complexity, cost and timetable of the rehabilitation proceedings would depend on numerous factors, such as the debtor's assets, situation, nature and amount of debts, number of creditors, and issues with creditors. The procedure in the trial court takes around 12 months or more. The cost of the proceedings could be approximately 30% of the value of the debtor's estate.	The complexity, cost and timetable of the liquidation proceedings would depend on the liquidators' discussions with the creditors pertaining to the settlement of their claims vis-à-vis the available assets and the debtor's available assets, among others. The procedure in the trial court takes around 24 months or more. The cost of the proceedings could be approximately 30% of the value of the debtor's estate.	The complexity, cost and timetable of the rehabilitation proceedings would depend on the manner by which the rehabilitation or restructuring agreement is adopted by the parties.
Is there a mandatory set-off of mutual debts on insolvency?	Yes, under the Philippine Civil Code, set-off happens by operation of law.	Yes, if the debtor and creditor are mutually debtor and creditor of each other, one debt will be set off against the other and only the balance, if any, will be allowed in the liquidation proceedings.	Yes, under the Philippine Civil Code, set-off happens by operation of law.
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	No, because upon issuance of a liquidation order, the entity is dissolved. The only affairs that may be conducted are those related to the winding up of the business.	Yes.

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	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
OTHER FACTORS			
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Yes, unless otherwise authorized by the court, no funds or property of the debtor will be used or disposed of except in the ordinary course of business of the debtor, or unless necessary to finance administrative expenses of rehabilitation proceedings. Directors and officers of a debtor will be liable for double the value of the property sold, embezzled or disposed of or double the amount of the transaction involved, whichever is higher to be recovered for the benefit of the debtor and the creditors, if they, having notice of the commencement of the proceedings, or having reason to believe that proceedings are about to be commenced, or in contemplation of the proceedings, willfully commit the following acts: (a) dispose or cause to be disposed of any property of the debtor other than in the ordinary course of business or authorize or approve any transaction in fraud of creditors or in a manner grossly disadvantageous to the debtor and/or creditors (b) conceal or authorize or approve the concealment, from the creditors, or embezzle or misappropriate, any property of the debtor Criminal liability may also result if it is shown that this prohibition was knowingly violated.	The liquidation order will prohibit payments and transfers of any property by the debtor. Directors and officers of a debtor will be liable for double the value of the property sold, embezzled or disposed of or double the amount of the transaction involved, whichever is higher to be recovered for the benefit of the debtor and the creditors, if they, having notice of the commencement of the proceedings, or having reason to believe that proceedings are about to be commenced, or in contemplation of the proceedings, willfully commit the following acts: (a) dispose or cause to be disposed of any property of the debtor other than in the ordinary course of business or authorize or approve any transaction in fraud of creditors or in a manner grossly disadvantageous to the debtor and/or creditors (b) conceal or authorize or approve the concealment, from the creditors, or embezzle or misappropriate, any property of the debtor Criminal liability may also result if it is shown that this prohibition was knowingly violated.	Directors and officers of a debtor will be liable for double the value of the property sold, embezzled or disposed of or double the amount of the transaction involved, whichever is higher to be recovered for the benefit of the debtor and the creditors, if they, having notice of the commencement of the proceedings, or having reason to believe that proceedings are about to be commenced, or in contemplation of the proceedings, willfully commit the following acts: (a) dispose or cause to be disposed of any property of the debtor other than in the ordinary course of business or authorize or approve any transaction in fraud of creditors or in a manner grossly disadvantageous to the debtor and/or creditors (b) conceal or authorize or approve the concealment, from the creditors, or embezzle or misappropriate, any property of the debtor Criminal liability may also result if it is shown that this prohibition was knowingly violated.

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	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
What is the order of priority of claims?	A rehabilitation plan is required to ensure that all payments made under the plan follow the priority established under the provisions of the Civil Code on concurrence and preference of credits and other applicable laws. Therefore, the order of priority based on the Civil Code and the Labor Code will apply. See the order of priority of claims for liquidation.	During the liquidation proceedings, administrative expenses are to be paid as they become due, unlike other obligations that are subject to a stay or suspension order. Administrative expenses consist of reasonable and necessary expenses: • incurred or arising from filing of a petition under the provisions of this act • arising from, or in connection with, the conduct of the proceedings under this act, including those incurred for the rehabilitation or liquidation of the debtor • incurred in the ordinary course of business after the commencement date • for the payment of new obligations obtained after the commencement date to finance the rehabilitation of the debtor • incurred for the fees of the rehabilitation receiver or liquidator and of the professionals engaged by them • that are otherwise authorized or mandated under this act or such other expenses as may be allowed by the Supreme Court in its rules Under Article 110 of Republic Act No. 44 (as amended) or the Labor Code of the Philippines, workers enjoy first preference as regard to their wages and other monetary claims in the event of bankruptcy or liquidation of an employer's business. Notwithstanding the provisions under the Civil Code on preference of credits or any other provision of law to the contrary, unpaid wages and monetary claims will be paid in full before claims of the government and other creditors may be paid.	Same as in court-supervised rehabilitation. Any out-of-court rehabilitation plan must comply with the minimum requirements of a rehabilitation plan.

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Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
	Under Article 2,247 of the Civil Code, duties, taxes and fees due to the State or any subdivision thereof pertaining to a specific movable property enjoy absolute preference over all other claims. Thereafter, if there are two or more credits with respect to the same specific movable property, they will be satisfied pro rata. Article 2241 of the Civil Code enumerates the special preferred credits with respect to a specific movable property, as follows: (1) claims arising from misappropriation, breach of trust or malfeasance by public officials committed in the performance of their duties, on the movables, money or securities obtained by them (2) claims for the unpaid price of movables sold, on said movables, so long as they are in the possession of the debtor, up to the value of the same; and if the movable has been resold by the debtor and the price is still unpaid, the lien may be enforced on the price; this right is not lost by the immobilization of the thing by destination, provided it has not lost its form, substance and identity; neither is the right lost by the sale of the thing together with other property for a lump sum, when the price thereof can be determined proportionally (3) credits guaranteed with a pledge so long as the things pledged are in the hands of the creditor, or those guaranteed by a chattel mortgage, upon the things pledged or mortgaged, up to the value thereof (4) credits for the making, repair, safekeeping or preservation of personal property, on the movable thus made, repaired, kept or possessed	

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Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
	(6) expenses for the preservation or improvement of real property when the law authorizes reimbursement, upon the immovable preserved or improved (7) credits annotated in the Registry of Property, in virtue of a judicial order, by attachments or executions, upon the property affected, and only as to later credits (8) claims of co-heirs for warranty in the partition of an immovable among them, upon the real property thus divided (9) claims of donors of real property for pecuniary charges or other conditions imposed upon the donee, upon the immovable donated (10) credits of insurers, upon the property insured, for the insurance premiums for two years Credits that do not enjoy any preference with respect to specific property are satisfied in the order established under Article 2244 of the Civil Code, thus: (1) proper funeral expenses for the debtor, or children under their parental authority who have no property of their own, when approved by the court (2) credits for services rendered the insolvent by employees, laborers or household helpers for one year preceding the commencement of the proceedings in insolvency (3) expenses during the last illness of the debtor or of their spouse and children under theirr parental authority, if they have no property of their own	

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Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
	(4) compensation due to the laborers or their dependents under laws providing for indemnity for damages in cases of labor accident, or illness resulting from the nature of the employment (5) credits and advancements made to the debtor for support of themselves and family, during the last year preceding the insolvency (6) support during the insolvency proceedings, and for three months thereafter (7) fines and civil indemnification arising from a criminal offense (8) legal expenses, and expenses incurred in the administration of the insolvent's estate for the common interest of the creditors, when properly authorized and approved by the court (9) taxes and assessments due to the national government, other than those mentioned in Articles 2241, No. 1, and 2242, No. 1 (10) taxes and assessments due to any province, other than those referred to in Articles 2241, No. 1, and 2242, No. 1 (11) taxes and assessments due to any city or municipality, other than those indicated in Articles 2241, No. 1, and 2242, No. 1 (12) damages for death or personal injuries caused by a quasi-delict (13) gifts due to public and private institutions of charity or beneficence (14) credits that, without special privilege, appear in (a) a public instrument, or (b) in a final judgment, if they have been the subject of litigation	

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	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
		In satisfying several preferred credits registered with the Register of Deeds, the rule is priority of credits in the order of the time of registration. On the other hand, preferred credits in Article 2244 (14) enjoy preference in the order of priority of the dates of the instruments and the judgments.	
Are there any pension liabilities?	There is no specific provision under Philippine law concerning pension liabilities in the context of rehabilitation.	There is no specific provision under Philippine law concerning pension liabilities in the context of liquidation.	There is no specific provision under Philippine law concerning pension liabilities in the context of rehabilitation.
Is it possible to challenge prior transactions?	Yes. Any transaction involving the debtor's funds or assets occurring prior to the commencement of the proceedings/issuance of the liquidation order, which was executed with intent to defraud a creditor or that constitute undue preference of creditors, may be the subject of rescission.		The law is silent.

COVID-19

Is state support for distressed businesses available?

Yes, the government has provided a grace period of at least 30 days for amounts due on commercial leases for micro, small and medium enterprises affected by the enhanced community quarantine. The rent falling due during the period of quarantine will be amortized for the next six months following the lifting of the quarantine, without interest, fees or penalties. Further, the government has implemented programs of assistance, such as a Small Business Wage Subsidy Program for affected establishments.

Under the Implementing Rules of the Bayanihan to Heal as One Act, all covered institutions, including lenders and banks, are to implement a 30-day grace period for all loans with principal or interest falling due within the period of enhanced community quarantine, without incurring interest on interest, penalties, fees and other charges. The borrower may pay the accrued interest for the 30-day grace period on a staggered basis over the remaining life of the loan.

The same law provides that the president is authorized to move statutory deadlines for payment of taxes, fees and other charges required by law, and to grant any benefit in order to ease the burden on individuals under the Enhanced Community Quarantine in place by reason of the COVID-19 pandemic. The president may direct all financial institutions to implement a minimum 30-day grace period for payment of all loans, without incurring interests, penalties, fees or other charges. The president may also provide for a minimum 30-day grace period for the payment of residential rents falling due within the period of enhanced community quarantine, without incurring interests, penalties, fees and other charges.

Last, the Department of Labor has launched a COVID-19 Adjustment Measures Program that provides aid to employees of affected establishments.

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	Court-supervised rehabilitation	Liquidation	Out of court rehabilitation (pre-negotiated rehabilitation and out-of-court restructuring agreements)
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	As previously mentioned, the president is authorized by law to move statutory deadlines and timelines for the payment of taxes, fees and other charges required by law, and to grant any benefit in order to ease the burden on individuals under the enhanced community quarantine in place by reason of the COVID-19 pandemic. The president may direct all financial institutions to implement a minimum 30-day grace period for payment of all loans, without incurring interests, penalties, fees or other charges. The president may also provide for a minimum 30-day grace period for the payment of residential rents falling due within the period of enhanced community quarantine, without incurring interests, penalties, fees and other charges. The Implementing Rules of the Bayanihan to Heal as One Act, provide that all covered institutions, including lenders and banks, are to implement a 30-day grace period for all loans with principal or interest falling due within the period of enhanced community quarantine, without incurring interest on interest, penalties, fees and other charges. The borrower may pay the accrued interest for the 30-day grace period on a staggered basis over the remaining life of the loan.		
Is further reform of the insolvency regime being discussed/anticipated? If so, give details.	There is a bill pending in the Lower House in Congress providing for stiffer penalties for the violation of the FRIA. As it stands, the law provides for a penalty of a fine of not more than PHP 1 million and imprisonment for not less than three months and not more than five years. The pending bill proposes that the period of imprisonment be increased to not less than one year and not more than five years. The bill is presently pending with the Lower House's Committee on Banks and Financial Intermediaries.		

UPDATED MAY 7, 2020

POLAND

POLAND	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
INITIAL CONSIDERATIONS			
Can you take security over all types of assets, including working capital?	As a rule, you can take security over all types of assets. However, security must satisfy the principle of certainty concerning the specification. A third party must be able to identify exactly which assets are taken under security. References to "working capital," as such, would not be specific enough, while securing over a specific inventory or specific receivables is allowed.	As a rule, you can take security over all types of property. However, security must satisfy the principle of certainty concerning the specification. A third party must be able to identify exactly which assets are taken under security. References to "working capital," as such, would not be specific enough, while securing a specific inventory or specific receivables is allowed.	As a rule, you can take security over all types of property. However, security must satisfy the principle of certainty concerning the specification. A third party must be able to identify exactly which assets are taken under security. References to "working capital," as such, would not be specific enough, while securing a specific inventory or specific receivables is allowed.

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	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
What is the nature of the process?	The aim of the bankruptcy proceedings is to ensure that the receivables of the bankrupt's creditors are satisfied in the highest possible amount and, ultimately, to liquidate the bankrupt entity. The bankruptcy proceedings begin after the declaration of bankruptcy is made by the court. At this point, the court designates a receiver (syndyk masy upadłości) and all the assets of the bankrupt become the bankruptcy estate. The receiver's task is to act on behalf of the bankrupt and to prepare the liquidation of the entity. From that point onward, the bankrupt has no right to manage or use the bankruptcy estate. In general, bankruptcy proceedings consist of the following steps: 1) determination of the composition of the bankruptcy estate and its liquidation; 2) drawing up the list of creditors and their receivables (at the same time as point 1) above); 3) division of the obtained funds between the creditors included in the list of creditors. After the final division plan is fulfilled (all funds are released to the creditors), the bankruptcy proceedings end. The receiver is obliged to apply for the removal of the company from the register. The company is dissolved upon completion of the bankruptcy proceedings, as of being removed from the register. Nevertheless, if all creditors are satisfied in full or an arrangement is approved at the end of the bankruptcy proceedings, the receiver will return the remaining assets to the company and the company will neither be dissolved nor removed from the register.	This is the least formalized restructuring procedure, which is very similar to the "scheme of arrangement" proceedings in the UK. The main precondition to implement the proceedings of the approval arrangement is that the sum of the disputed receivables does not exceed 15% of the sum of the receivables that gives the right to vote on the arrangement. It is important that in these proceedings the debtor collects, by themselves, the votes of creditors. It will be done in writing on a special form, which is precisely described in the Restructuring Act. In order to execute these actions, an agreement with the arrangement supervisor (nadzorca układu) will be concluded.	The accelerated arrangement proceedings allow a debtor to reach an arrangement with its creditors after the preparation and approval of the inventory of receivable debts (spis wierzytelności). It is more formalized than the proceedings of the approval arrangement. A relevant application (together with the initial restructuring plan) will be submitted to the court, which is the body competent for opening these proceedings. In order to commence them, the total sum of disputed receivable debts giving the right to vote on the arrangement will not exceed 15% of the sum of the receivables that gives the right to vote on the arrangement. The main advantage of these proceedings is that immediately after their commencement, the enforcement proceedings of the receivable debts covered by the arrangement are suspended by operation of law. What is more, if it is necessary to continue the operation of the enterprise, the judge-commissioner may set aside the seizures effected prior to the day when the accelerated arrangement proceedings were opened. Both of these institutions give the debtor an effective tool to secure its enterprise from the creditors, which may allow them to avoid its liquidation and to conclude an arrangement with the creditors. However, if the creditor had a receivable secured on the debtor's property by, for example, a mortgage, pledge or a registered pledge, the debt enforcement can be carried out only from the object of the security.

POLAND

	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
What is the solvency requirement?	A debtor may be declared bankrupt if it becomes insolvent within the meaning of the bankruptcy law. A debtor being a corporate entity (e.g., a limited liability company) is deemed insolvent if: 1) it loses its ability to satisfy its outstanding debts (it is presumed that a debtor is not able to satisfy its outstanding debts if the delay in satisfaction of those debts exceeds three months) — a mere delay in payment of debts is not sufficient 2) the amount of its liabilities exceeds the value of its property and such status lasts for a period of 24 months (however, certain liabilities are not taken into account)	Same as in bankruptcy proceedings. However, the restructuring proceedings may also concern an entity at risk of insolvency (not yet insolvent within the meaning of the bankruptcy law).	Same as in bankruptcy proceedings. However, the restructuring proceedings may also concern an entity at risk of insolvency (not yet insolvent within the meaning of the bankruptcy law).
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes.	Yes.	Yes.
Is restructuring of both secured and unsecured claims possible?	The secured claims (e.g., claims secured with a mortgage or pledge established over the bankrupt debtor's property) are satisfied not from the bankruptcy pool (proceeds received from the monetization of the bankruptcy estate) but from the proceeds received from the sale of encumbered assets (only a surplus of the secured claims over the amount of secured claims is transferred to the bankruptcy pool for the benefit of all (unsecured) creditors).	Yes.	Yes.

POLAND

	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
Is there a classification of creditors and shareholders?	Claims subject to repayment by a receiver (from funds received from the monetization of a bankruptcy estate) are divided into four categories. The first category claims include, in particular, salaries, social insurance contributions, the costs of bankruptcy proceedings (including the receiver's fee) and other expenses and claims arising after the debtor is declared bankrupt. Trade receivables are considered as second category claims (this category also covers taxes) and are repaid only if the first category claims are satisfied in full. The third category is the interest from the aforementioned claims, and the forth category is loans (and similar transactions) from the shareholders.	Depends on the arrangement accepted by the creditors.	Depends on the arrangement accepted by the creditors.
Is there a requirement for voting approvals by shareholders?	No.	No.	No.

POLAND

	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
Is there a requirement for voting approvals by shareholders' creditors?	The committee of creditors is an obligatory body only if the bankrupt or, at least, three creditors, or a single creditor or creditors holding jointly no less than one-fifth of the sum of claims against the debtor request its establishment. The committee of creditors consists, as a rule, of five members and two deputies. It assists the receiver, inspects their acts, examines the status of the bankruptcy estate funds, authorizes acts that require the consent of the committee of creditors, and gives its opinion on other matters if required to do so by the judge-commissioner or the receiver. The following acts require the consent of the committee of creditors, on pain of invalidity: 1) the receiver continuing to run the enterprise, if it is to be continued for more than three months from the day of the declaration of bankruptcy 2) forgoing the sale of the enterprise as a whole 3) unrestricted sale of property included in the bankruptcy estate 4) taking out loans or credits, and encumbering the bankrupt's assets with limited rights 5) recognizing, waiving or making a settlement in respect of disputed claims and submitting a dispute to a conciliatory court for determination If a committee of creditors has not been established, the acts reserved for the committee of creditors are undertaken by the judge-commissioner.	Yes.	Yes.
Is there an ability to bind minority dissenting creditors?	Yes. Dissenting creditors are bound if the required creditor approvals are obtained.	Yes. Dissenting creditors are bound if the required creditor approvals are obtained.	Yes. Dissenting creditors are bound if the required creditor approvals are obtained.

POLAND

	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
COMMENCING THE PROCESS			
Who can commence?	1) The debtor. 2) The creditor. 3) In case of partnership, a partner of the debtor. 4) In case of a company, a member of the management board of the debtor.	The debtor.	The debtor.
Is shareholders' consent required to commence proceeding?	No.	No.	No.
Is there an ability to consolidate group estates?	No.	No.	No.
Is there any court involvement?	Yes. The court opens the bankruptcy proceedings. The judge-commissioner directs the course of the bankruptcy proceedings, exercises supervision over acts of the receiver, designates acts that the receiver cannot perform without their permission or without the permission of the committee of creditors, and points out deficiencies in the receiver's performance.	Yes, but the court's involvement is limited. The arrangement will be approved by the court in 14 days after filing the application for approval.	Yes.
Who manages the debtor?	Receiver (syndyk masy upadłości).	No change of management over the debtor.	No change of management over the debtor.
What is the level of disclosure of the process to voting creditors?	N/A	Same as in the reorganization proceedings.	Same as in the reorganization proceedings.

POLAND

	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	The following entities are excluded: 1) State Treasury 2) local government units 3) public independent health care institutions 4) institutions and legal persons established by way of an act, unless such act provides otherwise, and is created in performance of the obligation imposed by the act 5) natural persons running an agricultural holding, who do not run other economic or professional activities 6) higher education institutions 7) investment funds	Same as in the reorganization proceedings.	Same as in the reorganization proceedings.

POLAND

	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
How long does it generally take for a creditor to commence the procedure?	The rule is that the court should issue a ruling in the matter of the declaration of bankruptcy within two months of the day of filing the application. This time limit, however, cannot be enforced. In practice, and on average, courts of first instance give their decision within one to four months. The creditors, among others, can appeal such a decision. A complaint should be examined by the court of second instance within one month of the day on which the case file was presented to it. Again, there are no legal remedies to make the court of second instance issue its decision. The time between the day of filing the complaint and the court's decision is usually two to three months.	Depends on the actions of the debtor.	The rule is that an application will be examined within a week of the application filing date. However, this cannot be enforced against the court. Usually the motion is examined within one to two months. The complaint proceedings take usually up to one to two months.
EFFECT OF PROCESS			
Does the debtor remain in possession with the continuation of incumbent management control?	No. The receiver takes over the control. The debtor loses the right to control the assets, under pain of nullity of legal actions performed in violation of the prohibition, and the management is taken over by the receiver. The receiver performs actions in its own name, but on account of the debtor, performs the reporting obligations incumbent on the debtor and is not responsible for the liabilities incurred in matters relating to the bankruptcy estate. The debtor is obliged to identify and release to the receiver all assets and documents relating to its activities, assets and accounts, in particular, books and other records kept for tax purposes and correspondence, and to provide the administrator with any necessary explanations.	Yes.	Yes.

POLAND

	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
What is the stay/moratorium regime (if any)?	There are certain limitations in this respect under Polish law. If the bankrupt is sued for payment after the declaration of bankruptcy, such action will be treated as a submission of claim in bankruptcy proceedings and it will not be continued in a common civil procedure. As a result, the claim will be listed in the list of creditors and their receivables prepared by the receiver. Nevertheless, the bankrupt can be sued for contractual arrangements other than for payment, and such proceedings can continue during the bankruptcy process. Please note, however, that in such case, it will be the receiver that will be the defendant, not the bankrupt entity itself. If the bankrupt is sued before the commencement of its bankruptcy proceedings, for the debts due and payable before the commencement of the bankruptcy proceedings, such a process is continued only if a debt has not been effectively listed in the list of creditors and their receivables. Moreover, the enforcement proceedings against the bankrupt entity (commenced before the opening of the bankruptcy proceedings) are suspended by virtue of law at the moment of opening of the bankruptcy proceedings.	N/A	The debtor cannot pay any amounts that arise from the receivables covered by virtue of law by the arrangement and, at the same time, the creditor cannot demand that such payment is performed.
Is there a provision for debtor-in-possession of super priority financing?	No.	No.	No.

POLAND

	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
Can the procedure be used to implement a debt-to-equity swap?	No.	Yes.	Yes.
Are third-party releases available?	No.	Yes.	Yes.
Are the proceedings recognized abroad?	Yes.	Depending on the law of the other country and treaties with particular states.	Depending on the law of the other country and treaties with particular states.
Has the UNCITRAL Model Law been adopted?	Yes.	N/A	N/A
How long, complex and expensive is the process?	The liquidation of a bankruptcy estate and repayment of creditors should be carried out as soon as possible. However, the exact timeframe for completing bankruptcy proceedings depends on the circumstances of the given case. In practice, it may even take a few years (two to five years) before the bankruptcy estate is fully liquidated, and the funds received from the trustee are repaid to the creditors.	This depends solely on the willingness of the parties to agree. The court approves the agreement within 14 days.	It should last for three to five months, which makes it an effective procedure for companies in temporary financial distress.
Is there a mandatory set-off of mutual debts on insolvency?	No.	No.	No.
Can a debtor continue to carry on business during insolvency proceedings?	No. The receiver controls the business and only leads it to the extent necessary to pay off the debts.	Yes.	Yes.

POLAND

	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
OTHER FACTORS			
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Yes. Wrongful trading restrictions apply. Civil liability: late filing or payment after the company is deemed illiquid or over-indebted; and for causing intentional damage contrary to public policy (e.g., where directors transfer assets upstream and, as a result, cause insolvency). Criminal liability: fraud; breach of trust; for late or incorrect filing (punishable by imprisonment or a fine); violation of bookkeeping duties, and fraudulent actions to prefer certain creditors of the debtor.	Same as in the bankruptcy proceedings.	Same as in the bankruptcy proceedings.
What is the order of priority of claims?	Claims subject to repayment by a receiver (from funds received from the monetization of a bankruptcy estate) are divided into four categories. The first category of claims includes, in particular, salaries, social insurance contributions, the costs of bankruptcy proceedings (including the trustee's fee) and other expenses and claims arising after the debtor is declared bankrupt. Trade receivables are considered as second category claims (this category also covers taxes) and are repaid only if the first category claims are satisfied in full. The third category is the interest from the aforementioned claims, and the forth category is the borrowings from the shareholders.	Depends on the arrangement proposals offered by the debtor. There is no statutory classification of the groups of creditors.	Depends on the arrangement proposals offered by the debtor. There is no statutory classification of the groups of creditors.
Are there any pension liabilities?	No specific regulation on this issue.	No specific regulation on this issue.	No specific regulation on this issue.

POLAND

	Bankruptcy proceedings (postępowanie upadłościowe)	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
		Procedure for the approval of the arrangement (postępowanie o zatwierdzenie układu)	Accelerated arrangement procedure (przyspieszone postępowanie układowe)
Is it possible to challenge prior transactions?	Polish law includes specific clawback provisions. Any payment made with the desire to put the creditor in a better position than they would otherwise be in bankruptcy proceedings is reviewable and potentially subject to a clawback claim. However, payments can be and are commonly made for other purposes, such as securing supply to continue trading. Payments made in that context will not usually be subject to clawback, because the main intention is to continue supply rather than to put the creditor in a better position on bankruptcy or restructuring. The relevant periods are calculated from the date of filing for the bankruptcy application (not declaring the debtor bankrupt). The unenforceability on the bankruptcy estate occurs by virtue of law if the transaction is made within: a) 12 months prior — a transaction made by the debtor gratuitously, or for a consideration but with the value of the debtor's performance being significantly in excess of that received by the debtor b) Six months prior — a transaction was made even for compensation but with a related party, or the debtor paid (or established a security on its assets) for amounts to the creditor which were not due at the date of payment	N/A	N/A

POLAND

Restructuring proceedings (Postępowanie restrukturyzacyjne)

	Standard arrangement procedure (postępowanie układowe)	Reorganization proceedings (postępowanie sanacyjne)
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	As a rule, you can take security over all types of property. However, security must satisfy the principle of certainty concerning the specification. A third party must be able to identify exactly which assets are taken under security. References to "working capital," as such, would not be specific enough, while securing a specific inventory or specific receivables is allowed.	As a rule, you can take security over all types of assets. However, security must satisfy the principle of certainty concerning the specification. A third party must be able to identify exactly which assets are taken under security. References to "working capital," as such, would not be specific enough, while securing over a specific inventory or specific receivables is allowed.
What is the nature of the process?	The proceedings are designed for debtors where the total sum of disputed receivable debts giving the right to vote on the arrangement exceeds 15% of the sum of receivables that gives the right to vote on the arrangement. This precondition also disqualifies them from opening approval arrangement and accelerated arrangement proceedings. It is necessary that in the application for the opening of the arrangement proceedings, the debtor can credibly prove its ability to cover the costs of the proceedings and any liabilities that arise after the day of their opening, on a regular basis. The Restructuring Act gives the debtor a chance to effectively achieve the goals of the arrangement proceedings. If it is necessary to reach them, the court may suspend enforcement proceedings in order to seek the recovery of receivable debts covered by the arrangement by operation of law and set aside the seizure of its bank accounts. It is important that during these proceedings, the debtor still administers its estate.	This is the most formalized restructuring proceedings. They give a debtor the broadest catalogue of restructuring measures compared to those available in other types of restructuring proceedings. The measures that were only available to the receiver in bankruptcy proceedings, are now available in reorganization proceedings and are all intended to allow the debtor to be transformed into an efficient enterprise. In particular, the administrator may withdraw from an agreement that has not been executed in full or in part before the commencement of the reorganization proceedings. In order to properly and efficiently carry out the reorganization proceedings and to implement restructuring measures, a restructuring plan needs to be prepared. Its diligent preparation and execution is crucial for the success or failure of the proceedings. After its approval by the judge-commissioner, it is implemented by the administrator. Similar to other restructuring proceedings, from the day of the opening of the reorganization proceedings until the day of their completion, the debtor or receiver may not fulfil obligations resulting from the receivable debts that, by operation of law, are covered by the arrangement. What is more, enforcement proceedings initiated prior to the day of the commencement of the reorganization proceedings are suspended by operation of law. The reorganization proceedings can be clearly distinguished from other restructuring proceedings. Apart from the restructuring of the debts, it is possible to use instruments allowing the debtor to restructure its assets, concluded contracts and relations with its employees. These measures, combined with full protection against court enforcement, can efficiently "heal" the debtor's company.

POLAND

Restructuring proceedings (Postępowanie restrukturyzacyjne)

	Standard arrangement procedure (postępowanie układowe)	Reorganization proceedings (postępowanie sanacyjne)
What is the solvency requirement?	Same as in bankruptcy proceedings. However, the restructuring proceedings may also concern an entity at risk of insolvency (not yet insolvent within the meaning of the bankruptcy law).	Same as in bankruptcy proceedings. However, the restructuring proceedings may also concern an entity at risk of insolvency (not yet insolvent within the meaning of the bankruptcy law).
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes.	Yes.
Is restructuring of both secured and unsecured claims possible?	Yes.	Yes. However, the creditors that have secured claims have to express their consent for their claims to fall under the arrangement.
Is there a classification of creditors and shareholders?	Depends on the arrangement accepted by the creditors.	Debtor under restructuring proceedings may offer different arrangement terms for different (not specified) types/groups of creditors.
Is there a requirement for voting approvals by shareholders?	No.	No.
Is there a requirement for voting approvals by shareholders' creditors?	Yes.	The judge-commissioner will convene a meeting of creditors in order to hold a vote on the arrangement immediately after the implementation of the restructuring plan in full or in part, however, no later than prior to the lapse of 12 months from the day of opening the reorganization proceedings. In practice, this period is usually longer than 12 months.
Is there an ability to bind minority dissenting creditors?	Yes. Dissenting creditors are bound if the required creditor approvals are obtained.	Yes. Dissenting creditors are bound if the required creditor approvals are obtained.
COMMENCING THE PROCESS		
Who can commence?	The debtor.	1) The debtor. 2) The creditor.
Is shareholders' consent required to commence proceeding?	No.	No.

POLAND

Restructuring proceedings (Postępowanie restrukturyzacyjne)

	Standard arrangement procedure (postępowanie układowe)	Reorganization proceedings (postępowanie sanacyjne)
Is there an ability to consolidate group estates?	No.	No.
Is there any court involvement?	Yes.	Yes. The court opens the reorganization proceedings. The judge-commissioner position is similar to the one in bankruptcy proceedings.
Who manages the debtor?	No change of management over the debtor.	Administrator (Zarządca). However, while opening the reorganization proceedings the court may grant the debtor's management board members powers to manage the company to a specified extent.
What is the level of disclosure of the process to voting creditors?	Same as in the reorganization proceedings.	A summary of the composition proposals is provided to secured creditors and all creditors that have filed claims. The proposed plan includes sufficient information to ensure voting on proposals is made on an informed basis.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Same as in the reorganization proceedings.	The following entities are excluded: 1) State Treasury and local government units 2) domestic banks 3) National Household Bank 4) branches of foreign banks 5) cooperative savings and credit unions 6) investment companies referred to in Article 2(14) of the Act of 10 June 2016 on the Bank Guarantee Fund, Deposit Guarantee Scheme and Forced Restructuring (Journal of Laws of 2017, Items 1937 and 2491 and of 2018, Items 685, 723, 1637 and 2243) 7) insurance and reinsurance undertakings 8) investment funds 9) financial institutions within the meaning of Article 4(1)(26) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 (OJ L 176, 27 June 2013, p. 1). (1), ("**Regulation No. 575/2013**"), established in a Member State of the EU where they are a subsidiary within the meaning of Article 4(1)(16) of Regulation No. 575/2013 to a credit institution referred to in Article 4(1) (1) of Regulation No. 575/2013, an entity referred to in points (3) to (9) or an investment firm and are subject to consolidated supervision in accordance with Articles 6 to 17 of Regulation No 575/2013

POLAND

	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
	Standard arrangement procedure (postępowanie układowe)	**Reorganization proceedings (postępowanie sanacyjne)**
		10) financial holding companies within the meaning of Article 4(1)(20) of Regulation No. 575/2013 that are established in a Member State of the EU 11) mixed financial holding companies within the meaning of Article 4(1)(21) of Regulation No. 575/2013 which have their registered office in a Member State of the EU 12) mixed financial holding companies within the meaning of Article 4(1)(22) of Regulation No. 575/2013 which have their head office in a Member State of the EU 13) parent financial holding companies in a Member State of the EU within the meaning of Article 4(1)(30) of Regulation No. 575/2013 14) EU parent financial holding companies within the meaning of Article 4(1)(31) of Regulation No. 575/2013 15) a parent mixed financial holding company in a Member State of the EU as defined in Article 4(1)(32) of Regulation No. 575/2013 16) an EU parent mixed financial holding company referred to in Article 4(1)(33) of Regulation No. 575/2013
How long does it generally take for a creditor to commence the procedure?	An application for the opening of the arrangement proceedings will be examined within two weeks of the day on which it was filed, unless it is necessary to schedule a hearing. In such a case, the application will be examined within six weeks. Usually the motion is examined within two to three months. The complaint proceedings usually take up to one to two months.	The statutory rule is that an application for the opening of the reorganization proceedings should examined within two weeks of the day when it was filed, unless it is necessary to schedule a hearing. In such a case, the application will be examined within six weeks. In practice, an application for the opening of the reorganization proceedings is examined within one to three months. The complaint proceedings usually take up to 3 months.
EFFECT OF PROCESS		
Does the debtor remain in possession with the continuation of incumbent management control?	Yes.	As a rule, the debtor loses the right to control the assets, under pain of nullity of legal actions performed in violation of the prohibition, and the management is taken over by the administrator. However, the court may grant the members of the debtor's management board members powers to manage the company and its assets to a specified extent.

POLAND

Restructuring proceedings (Postępowanie restrukturyzacyjne)

	Standard arrangement procedure (postępowanie układowe)	Reorganization proceedings (postępowanie sanacyjne)
What is the stay/moratorium regime (if any)?	The debtor cannot pay any amounts that arise from the receivables covered by virtue of law by the arrangement and, at the same time, the creditor cannot demand that such payment is performed.	The debtor cannot pay any amounts that arise from the receivables covered by virtue of law by the arrangement and, at the same time, the creditor cannot demand that such payment is performed. There are also restrictions on the admissibility of a set-off between the debtor and the creditor. Moreover, as a rule, it becomes inadmissible for the lessor or landlord to terminate the lease agreement of premises or real estate in which the debtor's business is conducted, which also applies, mutatis mutandis, to credit agreements, leases, property insurance, bank account agreements, suretyship agreements, agreements covering licenses granted to the debtor and guarantees or letters of credit. It should also be added that the opening of the proceedings affects labor relations and has the same effects on the rights and obligations of employees and employers as a declaration of bankruptcy. Ineffective in relation to the reorganization estate are securities, not established directly in connection with the receipt of the benefit by the debtor and were established by the debtor during the year before the date of the application to open the cure. Similar, it is ineffective to establish within that period a security that is more than half the value of the secured benefit received by the debtor on the date on which the security is established. The above rules apply, mutatis mutandis, to sureties, guarantees and other similar acts performed by the debtor to secure the benefit.
Is there a provision for debtor-in-possession of super priority financing?	No.	No.
Can the procedure be used to implement a debt-to-equity swap?	Yes.	Yes.
Are third-party releases available?	Yes.	Yes.
Are the proceedings recognized abroad?	Depending on the law of the other country and treaties with particular states.	Depending on the law of the other country and treaties with particular states.

POLAND

	Restructuring proceedings (Postępowanie restrukturyzacyjne)	
	Standard arrangement procedure (postępowanie układowe)	**Reorganization proceedings (postępowanie sanacyjne)**
Has the UNCITRAL Model Law been adopted?	N/A	N/A
How long, complex and expensive is the process?	It should last for five to 12 months, which makes it an effective procedure for companies in financial distress.	The judge-commissioner will convene a meeting of the creditors in order to hold a vote on the arrangement immediately after the implementation of the restructuring plan in full or in part, however, no later than before the lapse of 12 months from the day of opening the proceedings. lin practice, in case of huge enterprises, this term is often prolonged.
Is there a mandatory set-off of mutual debts on insolvency?	No.	No.
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	Yes.
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Same as in the bankruptcy proceedings.	Same as in the bankruptcy proceedings.
What is the order of priority of claims?	Depends on the arrangement proposals offered by the debtor. There is no statutory classification of the groups of creditors.	Depends on the arrangement proposals offered by the debtor. There is no statutory classification of the groups of creditors.
Are there any pension liabilities?	No specific regulation on this issue.	No specific regulation on this issue.
Is it possible to challenge prior transactions?	N/A	Following the opening of the proceedings, legal actions, free of charge or against payment, by which the debtor has disposed of their assets, are ineffective in relation to the reorganization estate if the value of the debtor's benefit significantly exceeds the value of the benefit received by the debtor, or reserved for the debtor or for a third party, made during the year prior to the date of filing the application to open cassation proceedings. The above also applies to a court settlement, recognition of the claim and waiver of the claim.

POLAND

Restructuring proceedings (Postępowanie restrukturyzacyjne)

	Standard arrangement procedure (postępowanie układowe)	Reorganization proceedings (postępowanie sanacyjne)
COVID-19		
Is state support for distressed businesses available?	Yes, wage subsidies to maintain employment and postponements of social security contributions. However, these measures are not linked to the opening of any kind of bankruptcy or restructuring proceedings.	
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	As of April 2020, there have been two acts of the Polish Parliament relating to COVID-19. However, the situation is constantly changing and the new COVID-19 legislation might still be adopted. According to the first COVID-19 legislation, the time limits in bankruptcy and restructuring proceedings cannot begin, and those already begun are suspended. This relates only to court proceedings already initiated. Consequently, the courts still have to decide on the restructuring or bankruptcy motions, but the time limits for appealing against the courts' decisions or for filing applications with creditors' claims cannot begin, while those already begun are suspended. Thus, after the first decision of the court, the proceedings are mostly halted. Based on the second COVID-19 act, cases were added to the catalogue of urgent cases to deal with a restructuring request, thus in these cases the time limits are not suspended. Under the second COVID-19 act, the regulation of time limits also covers the period for filing an application for bankruptcy. If the basis for declaring bankruptcy arose during the period in which an epidemic, emergency situation or the state of epidemic occurred, and the state of insolvency was caused by COVID-19, the period does not begin and is interrupted. After this period, the deadline resumes. If the state of insolvency arose during a period of an epidemic or the outbreak, it is assumed that it occurred because of COVID-19.	
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	We do not have such information.	

UPDATED MAY 5, 2020

RUSSIA

RUSSIA

	Supervision	Financial rehabilitation	External management	Liquidation
INITIAL CONSIDERATIONS				
Can you take security over all types of assets, including working capital?	Most types of assets can be used in security, including receivables and property (both immovable and movable), with the exception of property that is not subject to repossession and receivables inseparably connected with the identity of the creditor (i.e., claims for alimony and damage caused to health and safety, etc.). The most common forms of security are mortgage, floating charges, pledge of securities and pledge of rights.			
What is the nature of the process?	Supervision is the initial and sine qua non phase of bankruptcy proceedings for legal persons. The idea behind this stage is to identify all of the debtor's creditors, analyze the financial standing of the debtor and make arrangements for a first meeting of creditors to decide on the next stage of bankruptcy proceedings to be applied to the debtor. The statutory period prescribed for supervision is seven months, but it often drags out for more than one year under all manner of procedural excuses.	This procedure is rarely used in practice. It could be introduced if a company's creditors and the court believe that there are reasonable chances of the debtor avoiding bankruptcy liquidation. During this stage, the debtor's management remains in place and the business is carried out to a large extent as during the supervision stage, with minor exceptions. At the financial rehabilitation stage, a debtor presents a plan for payment of the outstanding obligations (debts), which can envisage, among other things, the writing-off of an important part of such debts. If the debtor succeeds in repaying its debts, the bankruptcy proceedings are terminated.	External management is aimed at restoring the debtor to financial health. The debtor's management is dismissed and a court-appointed administrator manages the debtor according to an external management plan, which is prepared by the administrator and approved at the meeting of creditors. The main differences between external management and financial rehabilitation are the much greater involvement of the external manager in the management of the debtor, the availability of extensive reorganizational measures and the preparation of the external management plan solely by the external manager.	Compared with other jurisdictions where insolvency proceedings are often used as a tool to defend a company from its creditors and to help it recover from a difficult financial situation, most insolvency proceedings in Russia end up with liquidation of the company. Thus, bankruptcy liquidation is very often ordered by courts after the supervision stage. At this stage, all of the debtor's assets are sold to pay creditors' claims in the order prescribed by law. Once the liquidation is completed, the debtor is wound up and ceases to exist. The management of the bankrupt company is dismissed from the date of bankruptcy.

RUSSIA

	Supervision	Financial rehabilitation	External management	Liquidation
			At the supervision stage, the creditors decide on commencement of external management. This decision is subject to approval by the court.	The procedure may be initiated by the creditors' meeting with court approval, or by the court itself. The maximum term for liquidation is six months, with the possibility of an extension for an additional six-month period. The court appoints a liquidator to administer the procedure.
What is the solvency requirement?	Available for insolvent entities or those likely to become insolvent. Any creditor can initiate bankruptcy proceedings, provided that the debt owed by the company to such creditor (i) is confirmed by a court decision or an arbitral award, (ii) exceeds RUB 300,000 (approximately USD 4,000 at the exchange rate of April 2020), and (iii) is at least three months overdue. Russian bankruptcy law sets forth certain exemptions regarding the commencement of bankruptcy proceedings by credit institutions and tax authorities. Such creditors can commence bankruptcy proceedings without confirmation of their claims by court decision/arbitral award, provided the debtor qualifies for bankruptcy proceedings under conditions (ii) and (iii) above. Any creditor must register notification of its intention to commence bankruptcy proceedings in the Unified Federal Register of Information on Legal Entities no later than 15 days prior to filing an application with the court.			
Is there a requirement to demonstrate COMI ("centre of main interests")?	No. The COMI test is underdeveloped in Russia. Most recent court practice upheld the approach that courts cannot use a COMI test while deciding on jurisdiction. Therefore, only companies registered under the laws of Russia may be the subject of bankruptcy proceedings. However, it should be noted that there is some inconsistency in Russian legislation and a non-Russian citizen can become the subject of bankruptcy proceedings if the COMI test is met.			
Is there a classification of creditors and shareholders?	Generally, no restructuring is possible. However, a certain amount of restructuring in relation to all claims can be provided by the settlement agreement.	Yes, as provided by the financial rehabilitation plan and the debt repayment schedule approved by the majority of the creditors present at the creditors' meeting. Additionally, restructuring of all claims can be provided by the settlement agreement.	Yes, as provided by the external management plan approved by the majority of the creditors present at the creditors' meeting. Additionally, restructuring of all claims can be provided by the settlement agreement.	Generally, no restructuring is possible. However, the restructuring of all claims can be provided by the settlement agreement.
Is there a requirement for voting approvals by shareholders?	There are the following classes of creditors: a) creditors for current obligations (i.e., accrued after the initiation of bankruptcy proceedings); b) secured creditors (registered claims with a certain ranking); c) unsecured creditors; and d) subordinated creditors (claims of shareholders, or claims submitted after the deadline for inclusion of claims into the bankruptcy register).			

RUSSIA

	Supervision	Financial rehabilitation	External management	Liquidation
Is there a requirement for approval by vote of shareholders?	Broadly, no. A shareholder vote is required to commence bankruptcy proceedings. Approval by the shareholders may, however, be necessary for certain actions, namely, from 29 July 2017, if a director of the debtor failed to fulfil his/her obligation to file a bankruptcy petition, persons entitled to initiate an extraordinary general meeting of shareholders or other controlling persons are obliged to file the bankruptcy petition themselves. In this case, the decision to file the bankruptcy petition is subject to approval by an extraordinary general meeting of shareholders.			
Is there a requirement for voting approvals by shareholders creditors?	Yes. The creditors' meeting/committee has a decisive role within bankruptcy proceedings. Approval requires a simple majority of the voting members of the committee or in value of creditors' claims present at the meeting. The capacity of secured creditors is limited. They can vote during the supervision stage. They can vote during the financial rehabilitation stage or external management stage on matters of electing a bankruptcy manager or filing for dismissal of the bankruptcy manager, provided such creditors waived their right to foreclose on collateral during the relevant stage. Nevertheless, secured creditors can participate in all creditors' meetings without the right to vote, including speaking on issues on the agenda of the meeting of creditors.			
Is there an ability to bind minority dissenting creditors?	Yes. Dissenting creditors are bound by decisions of the creditors' meeting if the necessary majority approve this. Generally, decisions of a creditors' meeting should be approved by a simple majority of votes of the creditors present at the meeting. A creditors' meeting is valid if creditors with more than a half of the total votes attend the meeting. Dissenting creditors can challenge a decision approved by the creditors' meeting if the decision (i) violates their rights or (ii) was approved ultra vires.			
COMMENCING THE PROCESS				
Who can commence?	(1) The debtor/its controlling persons, (2) any creditor, (3) tax authorities, and (4) an employee or a former employee of the debtor who has claims for the payment of a severance payment. The introduction of supervision is subject to court approval.	Financial rehabilitation is introduced by the court if (i) the first creditors' meeting approved the financial rehabilitation plan during the supervision stage or (ii) the creditors' meeting failed to decide on the next stage of bankruptcy proceedings, but the debtor's shareholders/ authorized third parties pleaded for the introduction of financial rehabilitation and secured the execution of a debt-rescheduling plan.	External management is introduced by the court if: (i) the first creditors' meeting decided on the introduction of external management or (ii) the creditors' meeting failed to decide on the next stage of bankruptcy proceedings and a financial rehabilitation plan was not introduced by either a third party or shareholders, but there is evidence that the debtor's solvency can be restored.	Bankruptcy liquidation is introduced by the court: (i) if the first creditors' meeting decided on liquidation of the debtor or (ii) in the absence of a decision of the first creditors' meeting and the presence of indications of insolvency of the debtor.
Is shareholder's consent required to commence proceeding?	Generally, no. However, the management of state/municipal unitary enterprises is obliged to file a voluntary bankruptcy application if the relevant governmental or municipal bodies approved the commencement of bankruptcy proceedings.			

RUSSIA

	Supervision	Financial rehabilitation	External management	Liquidation
Is there an ability to consolidate group estates?	No. Insolvency proceedings of a group of companies can be handled by the same court, but the estates and liabilities are not consolidated.			
Is there any court involvement?	During all stages of insolvency proceedings, the court is empowered to resolve disputes between the bankruptcy manager and creditors regarding issues arising within a bankruptcy case (e.g., complaint on actions/inaction of the bankruptcy manager, approval of a sale order, etc.). However, the court has a specific scope of involvement for each bankruptcy stage.			
	Limited court involvement. Specifically, the court approves the initiation of the procedure, decides on the validity of the claims of creditors and their inclusion in the register of creditors' claims, approves and removes the interim manager, and dismisses the debtor's manager. At the end of supervision, the court renders a decision on the next stage of bankruptcy proceedings. Generally, this decision is based on the decision of the debtor's registered creditors.	Limited court involvement. Specifically, the court approves the initiation of the procedure, approves and removes the financial rehabilitation manager, dismisses the debtor's manager, and approves the debt repayment schedule. • At the end of financial rehabilitation, the court renders one of the following decisions: • termination of the bankruptcy proceedings • cancellation of financial rehabilitation and the introduction of external management • introduction of liquidation	Limited court involvement. Specifically, the court approves the initiation of the procedure, approves and removes the external manager, considers challenging the plan prepared by the external management, and decides on the validity of the claims of creditors and their inclusion in the register of creditors' claims. The court may resolve to proceed with either: • satisfaction of the creditors' claims • declaring the debtor bankrupt and commencing liquidation	Heightened court involvement. Specifically, the court declares the debtor bankrupt, initiates the procedure, approves and removes the liquidation manager, approves the liquidation manager's report and, to the extent allowed by law, decides on matters falling within the exclusive competence of the creditors' meeting, and considers cases on challenging transactions. Liquidation ends with the court passing one of the following resolutions: • termination of liquidation procedures followed by official liquidation of the debtor • termination of the bankruptcy case due to full satisfaction of all creditors' claims (no liquidation) • approval of an amicable settlement and closing the bankruptcy case • reverting to external management (provided financial rehabilitation and/or external management have not been previously introduced)

RUSSIA

	Supervision	Financial rehabilitation	External management	Liquidation
Who manages the debtor?	The debtor's management retains all of its powers, but the temporary receiver (appointed by the court upon a motion from the person having requested the debtor's bankruptcy) exercises control over the actions of the management. If the management is dismissed, new management is appointed by the court from candidates proposed by a representative of the company's shareholders.	The debtor's management remains in place, but the financial rehabilitation manager and creditors' meeting exercise control over the actions of the management. Business is carried out largely as during the supervision stage, with minor exceptions.	The external manager manages the debtor. The debtor's management powers are terminated.	The liquidation manager manages the debtor. The debtor's management is dismissed.
What is level of disclosure of process to voting creditors?	The bankruptcy manager is obliged to disclose all information and documents to the creditors. Additionally, the bankruptcy manager should submit limited information to the Unified Federal Register of Bankruptcy Information. Additionally, bankruptcy managers are entitled to receive information on the debtor from the relevant authorities, including information covered by the bank/commercial secrecy regimes. Such information may then be reflected in the report of the bankruptcy manager and provided to the debtor's creditors.			
What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?	In accordance with the Russian Civil Code and Bankruptcy Law, state-run enterprises, non-commercial institutions, political parties and religious organizations may not be recognized as insolvent (bankrupt). A state corporation or a state company may be declared insolvent (bankrupt) if it is allowed by the federal law whereby the company was created. A foundation cannot be declared insolvent (bankrupt) if the establishment and operation of such fund is provided for by law. A public law company cannot be declared insolvent (bankrupt). The legislation to be applied depends on the industry and nature of the debtor.			

RUSSIA

	Supervision	Financial rehabilitation	External management	Liquidation
How long does it generally take for a creditor to commence the procedure?	After the creditor has its claims established through formal court proceedings by a court judgment that has entered into force, it should publish a prior notice on its intention to file the bankruptcy petition in the Unified Federal Register of Information on Legal Entities' Activities. Such a notice must be given no later than 15 calendar days before the bankruptcy petition is filed with the court. After that, it generally takes a few weeks/months, depending on the competent court.	Generally, it takes a few weeks/ months, depending on the competent court.	N/A	N/A

RUSSIA

	Supervision	Financial rehabilitation	External management	Liquidation
EFFECT OF PROCESS				
Does debtor remain in possession with continuation of incumbent management control?	Yes, but the temporary receiver exercises control over the actions of the management.	Yes, but the financial rehabilitation manager and creditors' meeting exercise control over the actions of the management.	No. Management powers cease.	No. Management powers cease.
What is the stay/moratorium regime (if any)?	After supervision is commenced: • Enforcement of all writs of execution is suspended. • No penalties or any other financial sanctions may be imposed on a debtor for failure to perform its obligations. • All proceedings related to the collection of debts from a debtor are suspended upon the petition of a creditor. • Withdrawal from the debtor's capital is prohibited. • Set-off is prohibited if it changes the priority of bankruptcy creditors. • Distribution of dividends is banned.	After the financial rehabilitation has commenced: • Injunction measures are terminated. • Enforcement of all writs of execution is suspended. • Withdrawal from the debtor's capital is prohibited. • Set-off is prohibited if it changes the priority of bankruptcy creditors. • Distribution of dividends is banned. • No penalties or any other financial sanctions may be imposed on a debtor for failure to perform its obligations.	A moratorium on the satisfaction of bankruptcy creditors' claims is imposed, save for current claims and first and second priority claims. The fulfilment of obligations is suspended and no penalties (fines, penalties) and other financial sanctions are charged. Additionally, previously adopted measures to secure creditors' claims are cancelled.	After the liquidation has commenced: • All creditors' claims are considered due and payable. • All bank accounts of the debtor, save for the one to be used for settlement, are to be closed by the liquidator. • Performance of the debtor's obligations under court writs is suspended. • All garnishments on the debtor's property are cancelled. • No penalties or any other financial sanctions may be imposed on a debtor for failure to perform its obligations.
Is there a provision for debtor in possession super priority financing?	No.	No.	No.	No.

RUSSIA

	Supervision	Financial rehabilitation	External management	Liquidation
Can procedure be used to implement debt-to-equity swap?	Russian bankruptcy law provides for an in-kind debt-to-equity swap option. During the external management or liquidation stages, creditors can approve the procedure for replacement of assets (zameschenie aktivov). The objective of this procedure is to establish one or more joint stock companies with subsequent transfer of the debtor's assets to the equity thereof. The debtor becomes the sole shareholder of the incorporated companies. The shares of such newly incorporated joint stock companies are subject to sale through open trading to restore the solvency of the debtor and repay creditors' claims.			
Are third party releases available?	No.	No.	No.	No.
Are the proceedings recognised abroad?	Yes. However, there is no firmly established approach. Russia is a party to a number of international treaties on the recognition and enforcement of court judgments, although none of these directly deals with bankruptcy. These include the CIS Convention "On Legal Aid in Civil and Family Law Disputes and Criminal Prosecution" adopted in Minsk on 22 January 1993, and the CIS Agreement "On the Procedure for Settlement of Disputes related to Economic Activity" adopted in Kiev on 20 March 1992. Additionally, the proceedings may also be recognized and enforced based on reciprocity.			
Has the UNCITRAL Model Law been adopted?	No.	No.	No.	No.
How long, complex and expensive is the process?	It depends on the size of the company and the nature of any recovery litigation conducted by the bankruptcy manager. The process can take months or years, and costs and complexity vary.			
Is there a mandatory set-off of mutual debts on insolvency?	No.	No.	No.	No.
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	Yes.	Yes.	Generally, no. The main purpose of the liquidation stage is to accumulate assets and pro rata repayment of creditors' claims with the subsequent winding-up of the debtor. However, under recent court practice, in some cases the debtor can carry on business if failing to do so is detrimental to creditors' rights.

RUSSIA

OTHER FACTORS

Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Under Russian bankruptcy law, a controlling person is defined as an individual or legal entity entitled to give obligatory instructions to the debtor or otherwise define its activity in the period not exceeding three years before the onset of insolvency indications. Any controlling person can be subject to secondary liability if: a) The controlling person failed to file a bankruptcy petition with a court although indications of the bankruptcy of the company were evident. In this case, the scope of controlling person liability is equal to the amount of creditors' claims accrued after the expiry of the period for filing a voluntary bankruptcy petition; or b) It is impossible to satisfy creditors' claims in full due to the fault of the controlling person. Should this be the case, the liability of the controlling person is equal to the amount of unsatisfied creditors' claims.
What is the order of priority of claims?	Russian law envisages the following ranking of claims (creditors): Priority Rank: Current expenses, which are monetary obligations that arise after the application for bankruptcy has been filed with the court, such as court expenses and bankruptcy manager expenses, have priority over claims of all other creditors; Russian law sets out the following order for settling current expenses: (i) court expenses and bankruptcy manager remuneration, and expenses associated with engaging other persons, whose participation is mandatory under the Bankruptcy Law, (ii) claims regarding salaries and severance pay, (iii) expenses associated with engaging persons whose participation in the bankruptcy proceedings is not mandatory, (iv) utility and maintenance charges, and (v) other current claims. First Rank: Claims connected with bodily injuries and other injuries to health. Second Rank: Claims of employees regarding their salaries and severance payments, and royalties to authors of items of intellectual property. Claims of employees regarding their salaries and severance payments in the amount of RUB 30,000 per month per person are to be settled first, followed by the remaining claims of employees regarding their salaries and severance payments. Should any property remain after that, royalties to authors of intellectual property become subject to payment. Third Rank: Claims of all other creditors, including claims from secured creditors and claims of state bodies (e.g., federal or regional government, tax, pension funds, etc.). Potential claims of regional governments in connection with closing mines also fall within this category.
Are there any pension liabilities?	Company pension schemes are secured by pension security associations and authorized governmental bodies. These arrangements are not affected by insolvency proceedings.

RUSSIA

	Supervision	Financial rehabilitation	External management	Liquidation
Is it possible to challenge prior transactions?	Yes. Transactions committed during supervision may be challenged if they violated any legal restrictions imposed in connection with the commencement of the procedure.	Yes. Transactions committed during financial rehabilitation may be challenged if they violated restrictions imposed in connection with the commencement of the procedure.	Yes. The external manager can challenge transactions if: a) They violated restrictions imposed in connection with the commencement of the procedure; or b) There are grounds for challenging these transactions set by claw-back provisions of the Bankruptcy Law.	Yes. The Bankruptcy Law states that the liquidator can address the court to challenge the following transactions entered into by an insolvent company prior to or after the commencement of the bankruptcy proceedings: • **"Suspicious" transactions**, which are transactions with a value (consideration) that deviates from the value of comparable transactions on the market. • **Transactions detrimental** (i.e., aimed at causing harm) to the interests of creditors. The bankruptcy manager may also challenge transactions aimed at impairing the monetary interests of creditors. • **Preferential transactions**: All transactions aimed at establishing the priority of one creditor over others with regard to the debtor's estate (i.e., bankruptcy estate) may be challenged by the bankruptcy manager. Moreover, transactions executed by the parties may be challenged on the grounds of the RF Civil Code (e.g., as a bad faith transaction). To invalidate transactions under the CC, the bankruptcy administrator has to prove that the legal defects of the transactions go beyond the defects of suspicious and preferential transactions set forth by the Bankruptcy Law. Note that claw-back rules are also applicable to payments, premarital agreements, tax and customs fees, set-offs, novation, etc.

RUSSIA

COVID-19

Is state support for distressed businesses available?

The Russian government approved a list of measures to support organizations and individual entrepreneurs working in the areas most affected by the spread of COVID-19 (including travel, tourism, culture, entertainment, sports, catering and services).

The list includes the following measures:

a) The deadlines for paying taxes, fees and insurance benefits for small and medium-sized companies were extended from three to six months.

b) Tax audits and checks on compliance with currency laws were postponed until 31 May 2020 (inclusive) (for unscheduled inspections of small and medium-sized organizations, the permission of the prosecutor's office will be required).

c) The deadlines for submitting tax returns and calculations, which must be submitted in March-May 2020, are extended for three months; the deadlines for submitting documents, information and explanations for 20 working days; the deadlines for submitting documents related to the establishment of tax residency and financial information for 2019 for three months; deadlines for filing claims for taxes, fees, insurance benefits for six months.

d) The deadlines for paying insurance benefits (industrial injury insurance) were extended from four to six months.

e) The rate of insurance for small and medium-sized organizations was reduced.

f) Small and medium-sized organizations working in the most affected sectors of the economy may ask creditors to introduce so-called "credit holidays" under the credit agreements (to suspend monthly payments and not to charge interest under credit agreements).

g) Tenants working in the most affected sectors of the economy may receive a deferral of rental payments under real estate lease contracts.

h) Small and micro organizations working in the most affected sectors of the economy can get interest-free payday loans.

RUSSIA

Supervision | Financial rehabilitation | External management | Liquidation

Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?

On 3 April 2020, the Russian government enacted a six-month moratorium on bankruptcy claims by creditors against companies and on the recovery of debts and penalties. The moratorium applies to companies whose activities were most affected by COVID-2019 (including travel, tourism, culture, entertainment, sports, catering and services) as well as to strategic and systematically important companies.

During the moratorium:

a) Courts are to return the insolvency petitions (1) filed during the moratorium and (2) filed prior to the moratorium but not accepted for consideration by the date the moratorium was introduced.

b) Notices on intention to file an insolvency petition filed during the moratorium shall not be published.

c) Creditors who have pledges over property are prohibited from enforcing that security (although enforcement against other forms of security, such as direct debit agreements, guarantees and suretyships, have not been prohibited).

d) Existing enforcement proceedings against protected debtors should be suspended (although property arrests and other restrictions remain in place). However, to sue the debtor in court during the moratorium period and to submit a writ of execution directly to a bank is not prohibited.

e) The obligation of a protected company to file a voluntary bankruptcy petition under the Bankruptcy Law is suspended during the moratorium period (although debtors still have the right to do so).

f) To protect the interests of creditors, protected debtors are prohibited from carrying out certain actions that could result in any unjustified extraction of value (namely, share buybacks and paying dividends, set-offs).

g) Financial sanctions (fines, default interest, etc.) should not accrue for affected debtors during the moratorium period

h) If insolvency proceedings are initiated within three months after the termination of the moratorium, any foreign currency nominated debt (which was incurred before the moratorium) is converted into rubles at the Russian Central Bank's exchange rate as of the date of enactment of the moratorium or the date of commencement of bankruptcy proceedings (whichever exchange rate is smaller).

Moreover, the moratorium affects the challenging of debtors' transactions. If insolvency proceedings are initiated within three months after the termination of the moratorium, certain transactions entered into by the debtor during the moratorium period may be challenged when:

1. The amount exceeds 1% of the debtor's assets; and
2. The transaction is outside the ordinary course of business.

The existing time periods for challenging debtors' transactions have been extended, so as to include:

1. the corresponding period prior to the introduction of the moratorium
2. the period of the moratorium
3. the period within one year from the termination of the moratorium, but no later than the date of initiation of bankruptcy proceedings

RUSSIA

Is further reform of the insolvency regime being discussed/anticipated? If so, give details.

In September 2019, a bill on extrajudicial bankruptcy proceedings for individuals was sent to parliament. The bill provides two additional options for individuals' bankruptcy proceedings: an extrajudicial procedure through a bankruptcy manager and a simplified court procedure. These options will be accessible for individuals if the general sum of debt is from RUB 50,000 to RUB 700,000 (approximately from USD 647 to USD 9,000 at the exchange rate of April 2020) and the individual did not alienate property worth more than RUB 3 million (approximately USD 40,000 at the exchange rate of April 2020) during the year prior to filing the application for bankruptcy.

In May 2019, the State Duma passed in the first reading a bill on a new procedure for including the creditors' claims in the register. The bill proposes that only the bankruptcy manager will be able to include creditors' claims in the register of the debtor. The bankruptcy manager must consider a creditor's claim no later than 30 days from the date of its receipt. Interested parties have the right to participate in the consideration. Information on the decision of the manager is posted within three days on the court's official website. Any interested person has the right to file a complaint against said decision with the court within 15 working days from the date of the information being posted on the website.

SINGAPORE

SINGAPORE	Winding-Up	Judicial Management	Scheme of Arrangement
INITIAL CONSIDERATIONS			
Can you take security over all types of assets, including working capital?	Yes, creditors can take security over all types of assets (for example, via a floating charge).	Yes, creditors can take security over all types of assets (for example, via a floating charge).	Yes, creditors can take security over all types of assets (for example, via a floating charge).
What is the nature of the process?	A process involving the liquidation of the company's assets, distribution to creditors and contributories and the eventual winding-up and striking off of the company. A Singaporean company can be wound up either voluntarily or by the court. A voluntary winding-up may be either a member's voluntary winding-up or a creditor's voluntary winding-up. A key difference between voluntary winding-up and winding-up by the court is the method by which the winding-up is initiated. A members' resolution is required in a voluntary winding-up but not in a winding-up by the court	Judicial management is a form of corporate rescue that a company in financial difficulty can rely on to stave off action by its creditors and buy time to (a) work out a way to rescue the business, (b) to make an arrangement with its creditors or (c) to carry out a controlled realization of its remaining assets to obtain the best value under the circumstances. A judicial manager is appointed by the court, who will take over the functions of the board of directors of the company, and will act to achieve one or more of the three goals stated above	A scheme of arrangement provides a statutory regime to allow the company to vary or modify its obligations in relation to its debts and liabilities owed to its creditors.

SINGAPORE

	Winding-Up	Judicial Management	Scheme of Arrangement
What is the solvency requirement?	**Members' voluntary winding-up (for solvent liquidation)** The requirement of a statutory declaration of solvency by the directors of the company for a members' winding-up. A declaration of solvency is a statutory declaration by the directors, or if there are more than two directors, the majority of the directors, that they (1) have made an inquiry into the affairs of the company; and (2) at a meeting of directors, have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding-up. **Winding-up by the court** The court may order the winding-up if the company is unable to pay its debts. There are three ways to establish an inability to pay debts: (1) failure to pay, secure or compound to the creditor's satisfaction within 21 days the amounts subject to a statutory demand (i.e., a demand for payment of a debt of SGD 10,000 or above); (2) execution or other process issued on a judgment, decree or order of any court in favor of a creditor of the company is returned unsatisfied in whole or in part; (3) it is proved to the satisfaction of the court that the company is unable to pay its debts. There are other statutory grounds for the winding-up of a company that are unrelated to solvency.	The court may make a judicial management order in relation to a company only if it is satisfied that the company is or is likely to become unable to pay its debts and it considers that the making of the order would likely achieve (i) the survival of the company, or the whole or part of its undertaking as a going concern; (ii) the approval under certain provisions of a compromise or arrangement between the company and any such persons as are mentioned in those provisions; and/or (iii) a more advantageous realization of the company's assets would be effected than with a winding-up. There are three ways to establish an inability to pay debts: (1) failure to pay, secure or compound to the creditor's satisfaction within 21 days the amounts subject to a statutory demand (i.e., a demand for payment of a debt of SGD 10,000 or above); (2) execution or other process issued on a judgment, decree or order of any court in favor of a creditor of the company is returned unsatisfied in whole or in part; (3) it is proved to the satisfaction of the court that the company is unable to pay its debts.	No solvency requirement.
Is there a requirement to demonstrate center of main interests (COMI)?	Singapore's courts have jurisdiction to wind up a foreign company in Singapore if it has a substantial connection with Singapore. Singapore being the COMI of the company is something that the court may rely on to support a determination that a foreign company has a substantial connection with Singapore.	A foreign company can also apply to be placed under judicial management only if it has "substantial connection" with Singapore. That Singapore is the COMI of the company is one of the aspects that the court may rely on to support a determination that a foreign company has a substantial connection with Singapore.	A foreign company would be able to commence a scheme of arrangement process only if it has "substantial connection" with Singapore. That Singapore is the COMI of the company is one of the aspects that the court may rely on to support a determination that a foreign company has a substantial connection with Singapore.

SINGAPORE

	Winding-Up	Judicial Management	Scheme of Arrangement
Is restructuring of both secured and unsecured claims possible?	No. Secured creditors (aside from those with floating charges over the company's assets) need not prove for their debts. They may proceed to realize their security and obtain full satisfaction of their debts. If the security realized is inadequate to cover the liability of the company to the secured creditor, the secured creditor may prove for the balance as an unsecured creditor.	Yes, in specific instances. The judicial manager of a company may dispose of or otherwise exercise their powers in relation to any property of the company that is subject to a floating charge as if the property were not subject to the security, and where such property is so disposed of, the holder of the security has the priority in respect of any property of the company directly or indirectly representing the property disposed of as they would have had in respect of the property subject to the security. Where, on an application by the judicial manager, the court is satisfied that the disposal, with or without other assets, of any property of the company subject to any other security (other than a floating charge) or any goods in the possession of the company under a hire purchase agreement, chattel leasing agreement or retention of title agreement, would be likely to promote the purpose or one or more of the purposes specified in the judicial management ("JM") order, the court may, by an order, authorize the judicial manager to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under any such agreement were vested in the company. Super-priority rescue financing may also be obtained with leave of court — such financing may be on terms that may compromise existing security over assets.	Yes. Super-priority rescue financing may also be obtained with leave of court — such financing may be on terms that may compromise existing security over assets.

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	Winding-Up	Judicial Management	Scheme of Arrangement
Is there a classification of creditors and shareholders?	Yes. Section 328 of the Singapore Companies Act, and the common law, provide for a priority among creditors and shareholders in the winding-up.	The judicial manager's statement of proposals must be approved by the majority in number and value of creditors in a creditors' meeting. There is no need to classify these creditors.	Creditors should be divided into separate classes "if their (legal) rights are so dissimilar that they cannot sensibly consult together with a view to their common interest." In other words, if a creditor's position will improve or decline to such a different extent vis-à-vis other creditors simply because of the terms of the scheme assessed against the most likely scenario in the absence of scheme approval, then it should be classified differently. However, the courts will take a broad, practical and objective approach in analyzing creditor relationships and ensure that the application of this principle does not lead to an impractical mushrooming of classes that could potentially result in the creation of unjustified minority vetoes. A separate meeting should be held for each disparate class of creditors. Depending on the facts of each case, broad examples of types of creditors that may be put in different classes include: (a) secured creditors; (b) creditors with priority and preferential claims and receiving payment in full compared to those receiving payment in part; (c) unsecured creditors; and (d) creditors whose claims are subordinated in liquidation. Related party creditors and contingent creditors would generally have their votes discounted.
Is there a requirement for voting approvals by shareholders?	Yes, in the case of voluntary winding-up. An ordinary resolution (i.e., more than 50% approval) is required where the company is wound up on the expiry of the company or on an event as specified in the company's constitution. A special resolution (i.e., more than 75% approval) is required otherwise.	Yes, an ordinary resolution is required (unless otherwise provided in the company's constitution) if the judicial management application is brought by the company.	Approval of the company is required in bringing the scheme application.

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	Winding-Up	Judicial Management	Scheme of Arrangement
Is there a requirement for voting approvals by shareholders' creditors?	Only in the case of a members' voluntary winding-up. For court-ordered and creditors' voluntary winding-up, it is the creditors as a whole, who have a say in how the liquidators conduct the winding-up process and in the remuneration of the liquidators. This power is exercised through creditors' meetings or through a committee of inspection that represents the creditors.	No, though approval is required by the creditors. The judicial manager's proposals must be approved by the majority in number and value of creditors. The creditors may also make modifications to the proposal, but must not do so unless the judicial manager consents to each modification. Where the judicial manager's proposals have been approved by the creditors, then it will be the duty of the judicial manager to manage the affairs, business and property of the company in accordance with the proposals, as from time to time revised by them, subject to any order of court made to regulate such management by the judicial manager pursuant to an application by a creditor or member of the company.	No, though approval is required by the creditors. The compromise or arrangement must be approved by the statutory majority of members or creditors (depending on whose rights are affected) present and voting, either personally, or by proxy, at a meeting of members or creditors convened in accordance with an order of the court under Section 210(1). The statutory majority required is a majority in number representing three-fourths in value of the creditors or class of creditors or members, or class of members present and voting either in person or by proxy. A compromise or arrangement is binding only if at a meeting convened in accordance with an order of the court, the requisite majority of creditors, or a class of creditors; or the requisite majority of the members, or class of members agree to the compromise or arrangement. **Pre-packaged restructuring** Parties that have negotiated schemes beforehand can apply for approval of the scheme without having called a scheme meeting. Pre-packaged schemes will be approved if the court is satisfied, among other things, that the requisite majorities would have been obtained had a meeting of the relevant creditors or class of creditors been called.

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	Winding-Up	Judicial Management	Scheme of Arrangement
Is there an ability to bind minority dissenting creditors?	In the event the court decides to grant a winding-up order, any such order made by the court is effective and binds all the creditors and contributories of the wound up company. The liquidator may take actions that bind any and all creditors of the company.	Yes. The actions of the judicial manager (whose statement of proposals must be approved by a majority of number and value of creditors) will bind all creditors.	All members or creditors of a company, or all members or creditors of a particular class, are bound by a compromise or arrangement made under Section 210, including members or creditors opposed to it, provided that the requirements of Section 210(3) are met. The court may also cram down on dissenting classes of creditors and approve the scheme notwithstanding the dissent of one or more classes of creditors provided, among other things, that the scheme receives approval of 50% of number and 75% of the value of all the creditors present and voting at the scheme meeting (regardless of classification) and the scheme does not discriminate unfairly between two or more classes of creditors, and is fair and equitable to each dissenting class.
COMMENCING THE PROCESS			
Who can commence?	The following parties can file an originating summons with a supporting affidavit to wind up a company compulsorily: • the company • any creditor, including a contingent or prospective creditor of the company • a contributory • a liquidator • a judicial manager • in the case of a company that is carrying on or has carried on banking business, the Monetary Authority of Singapore • various Ministers on grounds specified under the law	• the company itself (acting via a members' resolution) • the directors of the company (acting pursuant to a directors' resolution) • a creditor or creditors (including any contingent or prospective creditor or creditors)	An application may be made by the company; the creditor or any class of them; the members; the judicial manager (if the company has been placed under judicial management); or the liquidator (in the case of a company being wound up).

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	Winding-Up	Judicial Management	Scheme of Arrangement
Is shareholders' consent required to commence proceedings?	No, except in members' voluntary winding-up.	No, unless the company itself is applying for judicial management.	No, unless the company itself is applying for the scheme.
Is there an ability to consolidate group estates?	Technically, no. Each entity in a group must be wound up separately.	Technically, no. Each entity in a group must separately go through the judicial management process.	Technically, no. Each entity in a group must separately go through the scheme process. However, protection for key subsidiaries of a company undergoing a scheme may be obtained by leave of court.
Is there any court involvement?	In the case of a court-ordered winding-up, the court issues the winding-up order and appoints the liquidator. Thereafter, the liquidator generally runs the liquidation but the court retains supervisory powers. At the end of the liquidation process, the liquidator will require an order of court to be released and to dissolve the company. In the case of creditors' or members' voluntary winding-up, the court is generally not involved except in a supervisory role (e.g., removal of liquidators and review of liquidators' remuneration).	The court issues the judicial management order and appoints the judicial manager. Thereafter, the judicial manager generally runs the judicial management but the court retains supervisory powers (e.g., approval of super-priority rescue financing, control of the judicial manager's actions, extension of the judicial management order). At the end of the judicial management process, the judicial manager will require an order of court to be discharged. The new Insolvency, Restructuring and Dissolution Act (not yet in force) will introduce an alternative method for entry into judicial management by allowing a company to be placed in judicial management by following an "out of court" process with a resolution of the company's creditors.	The typical process for implementing a compromise or arrangement involves two separate court approvals. The court's permission must first be sought to hold a meeting of the creditors or members of a company, or of a class of creditors or members, for the purpose of putting to those creditors or members a proposal to implement a compromise or arrangement between those creditors or members and the company. If the court grants approval to hold the meeting, and the meeting approves of the proposed compromise or arrangement with the requisite statutory majority, then the court's permission must be sought to implement the compromise or arrangement. **Pre-packaged restructuring** While the court must ordinarily grant approval to hold the meeting, parties that have negotiated schemes beforehand can apply for approval of the scheme without having called a scheme meeting. Pre-packaged schemes will be approved if the court is satisfied, among other things, that the requisite majorities would have been obtained had a meeting of the relevant creditors or class of creditors been called.

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	Winding-Up	Judicial Management	Scheme of Arrangement
Who manages the debtor?	The liquidator. In a court-ordered winding-up, the liquidator is appointed by the court. In the event that no liquidator is appointed by the court, the official receiver will be the liquidator of the company. In a voluntary winding-up, the liquidator is appointed by the members or creditors (depending on whether it is a members' or creditors' winding-up). The new Insolvency, Restructuring and Dissolution Act (not yet in force) will introduce a new requirement that the person making a winding-up application must nominate a licensed insolvency practitioner as the liquidator and the official receiver may be nominated only if (i) the applicant has taken reasonable steps but is unable to obtain the consent of a licensed insolvency practitioner to be appointed as liquidator and (ii) the official receiver consents to being nominated as such.	The judicial manager, nominated by the parties, the court or the minister.	The parties proposing the scheme, or the company, may propose a scheme manager to facilitate the scheme of arrangement process. The court may also appoint a scheme manager.

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	Winding-Up	Judicial Management	Scheme of Arrangement
What is level of disclosure of process to voting creditors?	The following events must be published in the local gazette or in a local newspaper: 1. the making of the winding-up application (the notice must also be advertised in a local Chinese newspaper); 2. the making of the winding-up order 3. the appointment of the liquidator 4. the first meetings of creditors and contributories 5. any calls made on contributories and meetings to sanction such calls 6. the deadline for submission of proofs of debt 7. the intention to distribute dividends 8. the declaration of dividends 9. for a voluntary winding-up, the appointment of a provisional liquidator and the final meeting 10. for a creditors' winding-up, the notice of the creditors' meeting	Notice of a judicial management application must be given to the company and its receivers and managers. It must also be published in the local gazette and in an English-language local daily newspaper. The making of the judicial management order must also be published and notice of it must be sent to all creditors of the company. The company must, thereafter, submit a statement of affairs to the judicial manager. This statement of affairs would include information on the asset position of the company, the names and addresses of its creditors and information on any secured assets. Within 60 days of the judicial management order, the judicial manager must send to the registrar and all creditors and members a copy of their statement of proposals. Any substantial changes to the statement of proposals must be sent to all creditors and members, and a notice of such change must be published. If the statement of proposals is subsequently rejected, the court may discharge the judicial manager or make other orders. Such orders must be published.	Prior to the meeting to approve the scheme, the company must give notice of the meeting. This notice must contain certain information regarding the proposed scheme. Additionally, if the company applies for a moratorium under Section 211B of the Companies Act (which is far wider in scope than the one under Section 210(10)), the company must file with the application an affidavit containing information on the scheme to be proposed and on the creditors of the company. Thereafter, the company must submit information on its assets, any acquisitions or disposals of such assets, and financial information on the company and its subsidiaries.

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	Winding-Up	Judicial Management	Scheme of Arrangement
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Singaporean companies and foreign companies with a "substantial connection" to Singapore may undergo the liquidation process. However, where the company carries on or has carried on banking business, only the Monetary Authority of Singapore may commence liquidation proceedings.	A judicial management order may not be made in relation to a company after it has gone into liquidation, or in relation to companies that are banks and licensed under the Banking Act or finance companies licensed under the Finance Companies Act or insurance companies registered under the Insurance Act.	Singaporean companies and foreign companies with a "substantial connection" to Singapore may undergo the scheme of arrangement process. However, where the company is a banking corporation or a licensed insurer, the Monetary Authority of Singapore may intervene in proceedings and the scheme must have the approval of the minister in charge of banking or insurance matters. However, in Section 211B to 211J, which provide for expanded powers of the court with regard to schemes (such as the extended and automatic moratorium, cram downs, revotes) do not apply to certain classes of companies: • a company that is a bank • a company that is an airport licensee licensed under Section 36 of the Civil Aviation Authority of Singapore Act • a company that is a licensee for the provision of district cooling services licensed under Section 10 of the District Cooling Act • a company that is an electricity licensee licensed under Section 9 of the Electricity Act • a company that is a public waste collector licensee licensed under Section 31 of the Environmental Public Health Act • a company that is a finance company licensed under Section 6 of the Finance Companies Act • a company that is a gas transporter or an LNG terminal operator licensed under Section 7 of the Gas Act • a company that is an approved securitization company as defined in Section 13P(4) of the Income Tax Act

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			• a company that is a licensed insurer licensed under Section 8 of the Insurance Act • a company that is a public licensee licensed under Section 81 of the Maritime and Port Authority of Singapore Act to provide any port service or facility relating to any container terminal service or facility • a company that is a merchant bank, or any other financial institution, approved under Section 28 of the Monetary Authority of Singapore Act • a company that is a licensee licensed to operate a rapid transit system under Section 13 of the Rapid Transit Systems Act • a company that is a specified telecommunication licensee • declared under Section 32H of the Telecommunications Act • a company that is a covered bond special purpose vehicle
How long does it generally take a creditor to commence the procedure?	The duration from the time of the winding-up application to the issuance of a winding-up order is typically two to three months.	The duration from the time of the judicial management application to the issuance of a judicial management order is typically three to four months.	The duration from the time of an application to the court for leave to convene a creditors' meeting to consider a compromise or arrangement to sanction of a scheme order is typically three to six months. The timeline is likely to be much shorter for a pre-packed scheme that can be approved without a scheme meeting.

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	Winding-Up	Judicial Management	Scheme of Arrangement
EFFECT OF PROCESS			
Does the debtor remain in possession with the continuation of incumbent management control?	No. Once a winding-up order is made, the company's board of directors is functus officio (i.e., mandate has expired). The power and duty of running the company falls to the liquidator.	No. During the period for which a judicial management order is in force, all powers conferred and duties imposed on the directors will be exercised and performed by the judicial manager and not by the directors. The judicial manager must do all such things as may be necessary for the management of the affairs, business and property of the company.	Yes, but the company will typically appoint a scheme manager, whose powers, duties and rights are set out in the scheme document. The existing management of the company will not necessarily be displaced.
What is the stay/moratorium regime (if any)?	Where any action or proceedings against the company are pending, a stay of proceedings against the company may be obtained at any time after the making of the application and before the winding-up order is made. Once the winding-up order is made, no action or proceedings may be commenced against the company or proceeded with except with the leave of the court and upon such terms as the court may impose.	To facilitate the rehabilitation of the company, once an application for a judicial management order is made, and until the order is made or the application is dismissed, there is a moratorium on the winding-up of the company, on enforcement against the company and on the commencement or continuation of any legal process against the company or its property. On the making of the judicial management order, this moratorium extends to the appointment of receivers and managers and the exercise of any rights of re-entry or forfeiture under any lease over premises occupied by the company. The moratorium does not apply to certain types of security and contractual rights, such as set-off and netting.	There are two types of moratoriums available: under Section 211B and Section 210(10) of the Companies Act. Both have their advantages and disadvantages. **Section 211B Moratorium** The Section 211B moratorium covers (a) the passing of a winding-up resolution; (b) the appointment of a receiver and manager; (c) the continuation or commencement of any proceedings, execution, distress or any other legal process against the property of the company; (d) the taking of any step to enforce security; and (e) the enforcement of any right of re-entry or forfeiture. The moratorium does not apply to certain types of security and contractual rights such as set-off and netting. The moratorium can also apply worldwide.

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Winding-Up	Judicial Management	Scheme of Arrangement
		Upon filing an application for a stay under Section 211B(1) of the Companies Act, the company is granted an automatic moratorium that lasts for 30 days or until the date when the application is heard, whichever is earlier. However, to obtain such a moratorium, the company must meet the requirements set out in Section 211B(3), (4), (6) of the Companies Act. Such requirements include evidence of support from creditors, list of creditors and a brief description of the intended scheme of arrangement with sufficient particulars to enable the court to assess whether the intended scheme is feasible and merits consideration by the company's creditors. The automatic moratorium does not apply if within the period of 12 months immediately before the date on which the application is made, the company made an earlier application. **Section 210(10) Moratorium** Section 210(10) also provides for a more limited form of moratorium that only covers the commencement and continuing of legal proceedings against the company. In most cases, the preference is Section 211B as the automatic interim moratorium arises upon filing of the court application. However, there are types of companies that are excluded from applying for Section 211B, such as financial institutions and other types of companies prescribed, that would have to apply under Section 210 for an interim moratorium. Additionally, Section 211B has more wide ranging disclosure requirements, both on application and post-application. The Section 210(10) application can be made in a summary way and does not have formal disclosure requirements.

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	Winding-Up	Judicial Management	Scheme of Arrangement
Is there a provision for debtor in possession super-priority rescue financing?	Unlike for judicial management and schemes of arrangement, super-priority rescue financing is not expressly provided for in the context of winding-up. However, liquidators can (and do often) arrange for the financing of the costs of liquidation. In such cases, the financing would rank as "costs and expenses of the winding-up" alongside the liquidator's fees and ahead of all other unsecured creditors.	Judicial management is not a "debtor-in-possession" process. However, super-priority rescue financing is provided for. On the application of the judicial manager, the courts can grant rescue financing the same priority as liquidation expenses if the company is wound up, which means rescue financing would rank above all other preferential debts. If no other financing options are available, the rescue financing might rank above liquidation expenses or be secured by a security interest that has subordinate, equal or superior priority as regards existing security interests, provided that pre-existing security interests are adequately protected.	The courts can grant rescue financing the same priority as "costs and expenses of the winding-up" (assuming the scheme fails and the company is wound up), which means rescue financing would rank above all other preferential debts. If no other financing options are available, the rescue financing might rank even above liquidation expenses or be secured by a security interest that has subordinate, equal or superior priority as regards existing security interests, provided that pre-existing security interests are adequately protected.
Can the procedure be used to implement a debt-to-equity swap?	N/A	Debt-to-equity swaps may be pursued if the goal of the judicial management is to pursue a scheme of arrangement or to rehabilitate the company.	There is no restriction on debt-to-equity swaps.
Are third-party releases available?	Yes.	Yes.	Yes. In appropriate cases, the scheme may incorporate terms that affect third-party rights (including releases). In Daewoo Singapore Pte Ltd v. CEL Tractors Pte Ltd [2001] 2 SLR(R) 791, the Singapore Court of Appeal held that a scheme could incorporate an express term that affects the rights of creditors against a third party, such as a guarantor (creditors would release guarantors from their obligations under the guarantees they stood under). Such a scheme would fall within the purview of the statutory arrangement, and is valid and effectual. The company could obtain an injunction or an order of specific performance to compel the creditor to comply with the terms of the scheme.

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	Winding-Up	Judicial Management	Scheme of Arrangement
Are the proceedings recognized abroad?	Singapore is not a party to any treaty on international insolvency. It has, however, adopted the UNCITRAL Model Law on Cross-Border Insolvency, which may increase the chances of reciprocal recognition of Singaporean insolvency proceedings.	Singapore is not a party to any treaty on international insolvency. It has, however, adopted the UNCITRAL Model Law on Cross-Border Insolvency, which may increase the chances of reciprocal recognition of Singaporean insolvency proceedings.	Singapore is not a party to any treaty on international insolvency. It has, however, adopted the UNCITRAL Model Law on Cross-Border Insolvency, which may increase the chances of reciprocal recognition of Singaporean insolvency proceedings.
Has the UNCITRAL Model Law been adopted?	Yes.	Yes.	Yes.
How long, complex and expensive is the process?	The length, complexity and cost of the process depends on the size and complexity of the estate. Most liquidations can be resolved in two to three years from commencement.	The length, complexity and cost of the process depends on the size and complexity of the estate. However, there are strict timelines under the Companies Act that ensure the process is not drawn out. For example, the judicial manager must put together a statement of proposals within 60 days of the judicial management order. Further, judicial managers are appointed for an initial period of 180 days and must seek extensions from the court. The constant supervision of the court often means that the process is kept moving along and unnecessary delays are often avoided.	The length, complexity and cost of the process depends on the size and complexity of the estate and the terms of the scheme.
Is there a mandatory set-off of mutual debts on insolvency?	Yes. Bilateral claims are set off and only the residue (if any) may be proved against the insolvent company. Such setoffs override any contractual or agreed forms of set-off.	N/A	N/A

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	Winding-Up	Judicial Management	Scheme of Arrangement
Can a debtor continue to carry on business during insolvency proceedings?	In a voluntary winding-up (whether members' or creditors') the business of the company ceases from the commencement of the winding-up, except so far as the liquidator thinks is necessary for the beneficial winding-up of the company. Where a company is wound up by the court, the liquidator may carry on the company's business so far as is necessary for the beneficial winding-up for a period of up to four weeks after the making of the winding-up order. Thereafter, the liquidator must obtain the authority of either the court or the committee of inspection to continue with the business of the company. The liquidator has no power to carry on the business with a view to resuscitating the company or making profits. The liquidator's power to carry on the company's business is to be exercised primarily to enable the business to be sold off as a going concern.	The judicial manager has the power to continue to carry on the business of the company — and will usually do so depending on the goal of the judicial management process. Even if the eventual goal is the winding-up of the company, the judicial manager will usually continue carrying on the company's business so far as is necessary for the beneficial winding-up of the company.	Usually, the company can and will continue trading during the scheme of arrangement process.

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	Winding-Up	Judicial Management	Scheme of Arrangement
OTHER FACTORS			
Are there any wrongful or insolvent trading restrictions, and what is the directors' liability?	**Fraudulent trading** Section 340(1) of the Companies Act applies where, in the course of winding-up or any proceedings against a company, it appears that any business of the company has been carried on with an intent to defraud the creditors of the company or creditors of any other person or for any fraudulent purpose. On the application of the liquidator or any creditor or contributory of the company, the court may, if it thinks proper to do so, declare that any person, who was knowingly a party to the carrying on of the business in that manner, will be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company. Such a person may also be guilty of the commission of an offence under Section 340(5) of the Companies Act. Civil liability can be imposed on an officer of a company for fraudulent trading under Section 340(1) of the Companies Act without the need for any criminal conviction. Under Section 340(1) of the Companies Act, applicants are required to prove the carrying on of business with an intent to defraud and that the respondent was a knowing party to the carrying on of such business. This attracts a stricter degree of proof than would usually be required in civil cases not involving fraud. **Wrongful trading** Section 339(3) of the Companies Act provides that if, in the course of the winding-up of a company or in any proceedings against a company, it appears that an officer of the company, who was knowingly a party to the contracting of a debt, had, at the time the debt was contracted and after taking into consideration the other liabilities (if any) of the company, no reasonable or probable grounds	**Fraudulent trading** Section 340(1) of the Companies Act applies where, in the course of winding-up or any proceedings against a company, it appears that any business of the company has been carried on with an intent to defraud the creditors of the company or creditors of any other person or for any fraudulent purpose. On the application of the judicial manager or any creditor or contributory of the company, the court may, if it thinks proper to do so, declare that any person, who was knowingly a party to the carrying on of the business in that manner, will be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company. Such a person may also be guilty of the commission of an offence under Section 340(5) of the Companies Act. Civil liability can be imposed on an officer of a company for fraudulent trading under Section 340(1) of the Companies Act without the need for any criminal conviction. Under Section 340(1) of the Companies Act, applicants are required to prove the carrying on of business with an intent to defraud and that the respondent was a knowing party to the carrying on of such business. This attracts a stricter degree of proof than would usually be required in civil cases not involving fraud. **Wrongful trading** Section 339(3) of the Companies Act provides that if, in the course of the winding-up of a company or in any proceedings against a company, it appears that an officer of the company, who was knowingly a party to the contracting of a debt, had, at the time the debt was contracted and after taking into consideration the other liabilities (if any) of the company, no reasonable or probable grounds of expectation of the company	N/A

Winding-Up	Judicial Management	Scheme of Arrangement
or probable grounds of expectation of the company being able to pay the debt, such officer will be guilty of an offence. If found guilty, that person can also be made personally liable for the whole or part of the debt pursuant to Section 340(2) of the Companies Act. The offence is constituted based on an officer knowingly contracting a debt on behalf of the company when they had no reasonable or probable grounds of expectation that the company would be able to pay the debt. However, wrongful trading requires a criminal conviction of the delinquent officer before civil liability, to pay the whole or part of the debt incurred by the company, can be triggered. Wrongful trading must be established on a criminal standard of proof. The new Insolvency, Restructuring and Dissolution Act (not yet in force) will introduce a new wrongful trading provision that removes the requirement for a criminal conviction before civil liability can be imposed on an officer for wrongful trading. Under this act, a company "trades wrongfully" if it incurs debt or liabilities without reasonable prospect of meeting them in full when the company is insolvent, or becomes insolvent as a result of the incurrence of such debt or liability. The new clause empowers the court to declare that any person, who was a knowing party to the company trading wrongfully, will be personally liable and responsible for those debts or liabilities of the company. A new defense will also be introduced such that the court may relieve a person from personal liability if (a) the person acted honestly; and (b) having regard to all the circumstances of the case, the person ought fairly to be relieved from personal liability.	being able to pay the debt, such officer will be guilty of an offence. If found guilty, that person can also be made personally liable for the whole or part of the debt pursuant to Section 340(2) of the Companies Act. The offence is constituted based on an officer knowingly contracting a debt on behalf of the company when they had no reasonable or probable grounds of expectation that the company would be able to pay the debt. However, wrongful trading requires a criminal conviction of the delinquent officer before civil liability, to pay the whole or part of the debt incurred by the company, can be triggered. Wrongful trading must be established on a criminal standard of proof. The new Insolvency, Restructuring and Dissolution Act (not yet in force) will introduce a new wrongful trading provision that removes the requirement for a criminal conviction before civil liability can be imposed on an officer for wrongful trading. Under this act, a company "trades wrongfully" if it incurs debt or liabilities without reasonable prospect of meeting them in full when the company is insolvent, or becomes insolvent as a result of the incurrence of such debt or liability. The new clause empowers the court to declare that any person, who was a knowing party to the company trading wrongfully, will be personally liable and responsible for those debts or liabilities of the company. A new defense will also be introduced such that the court may relieve a person from personal liability if (a) the person acted honestly; and (b) having regard to all the circumstances of the case, the person ought fairly to be relieved from personal liability.	

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	There will also be a new provision that further states that a company or any person party to, or interested in becoming a party to, the carrying on of business with a company, may apply to the court for a declaration that a particular course of conduct, transaction or series of transactions would not constitute wrongful trading.	There will also be a new provision that further states that a company or any person party to, or interested in becoming a party to, the carrying on of business with a company, may apply to the court for a declaration that a particular course of conduct, transaction or series of transactions would not constitute wrongful trading.	
What is the order of priority of claims?	The Companies Act provides that the property of a company will, on its winding-up, be applied pari passu in satisfaction of its liabilities (subject to the prescribed preferential payments). The preferential debts that are to be paid in priority to all other unsecured debts are clearly set out in the order of ranking in the Companies Act as follows: (1) the costs and expenses of the winding-up including the taxed costs of the applicant for the winding-up order payable, the remuneration of the liquidator and the costs of any audit carried out (2) all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment of any employee (up to five months' salary or SGD 12,500, whichever is lower) (3) the amount due to an employee as a retrenchment benefit of ex gratia payment under any contract of employment or award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding-up (up to five months' salary or SGD 12,500, whichever is lower)	There is no statutory priority of claims in judicial management, unless the aim of the judicial management is to wind up the company (in which case the winding-up priority of claims would apply).	There is no statutory priority of claims for schemes of arrangement.

(4) all amounts due in respect of work injury under the Work Injury Compensation Act accrued before, on or after the commencement of the winding-up

(5) all amounts due in respect of contributions payable during the 12 months next before, on or after the commencement of the winding-up by the company as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation that is an approved scheme under the law relating to income tax

(6) all remuneration payable to any employee in respect of vacation leave or, in the case of their death, to any other person in their right, accrued in respect of any period before, on or after the commencement of the winding-up

(7) the amount of all tax assessed and all goods and services tax due under any written law before the commencement of the winding-up or assessed any time before the time fixed for the proving of debts has expired

Additionally, the above categories (1), (2), (3), (5) and (6) rank above the claims of the holders of debentures under any floating charge created by the company (which charge, as created, was a floating charge), and will be paid accordingly out of any property comprised in or subject to that charge.

Only after all the preferential debts are paid will the other unsecured creditors receive anything back. All unsecured debts rank equally and if there are insufficient funds to pay everyone, the debts are repaid in equal proportions.

SINGAPORE

	Winding-Up	Judicial Management	Scheme of Arrangement
Are there any pension liabilities?	Pension liabilities, insofar as they are provided for under the employee's contract, are preferred debts that are accorded higher priority than other unsecured creditors. Employers in Singapore may also be required to contribute to their employees' Central Provident Fund accounts. All amounts due in respect of such contributions payable during the 12 months next before, on or after the commencement of the winding-up by the company are also preferred debts that are accorded higher priority than other unsecured creditors.	None that are specific to the judicial management context.	None that are specific to the scheme of arrangement context.

SINGAPORE

	Winding-Up	Judicial Management	Scheme of Arrangement
Is it possible to challenge prior transactions?	A liquidator has certain powers available to recover the value of the company's assets in certain circumstances, including: (i) undervalue transactions; (ii) transactions with an unfair preference; (iii) extortionate credit transactions; and (iv) floating charges for past value. These come in the form of seeking the court's assistance in unravelling transactions that should not have taken place for a period prior to the commencement of winding-up. **Undervalue transactions** On an application of the liquidator, the court may order a clawback or restore undervalue transactions that an insolvent company had entered into. The Bankruptcy Act (the relevant provisions on antecedent transactions apply to companies as well) defines three categories of undervalue transactions: a gift or a gratuitous transaction, a transaction entered into in exchange for marriage with the other party, and a transaction in which the consideration received is significantly less than the value of the consideration provided by the insolvent company. The period in which an undervalue transaction may be challenged is five years prior to the date of the winding-up application. **Unfair preferences** In the same vein as undervalue transactions, the liquidator may apply to the court for an order to restore the position of the company to what it would have been had a party not been given an unfair preference by the company. An unfair preference occurs where a creditor, surety or guarantor is put in a better position than they would have been by an act of the company, and the act was influenced by a desire to put the creditor, surety or guarantor in a better position. The relevant period here is six months prior to the commencement of the winding-up.	The judicial manager has the power to set aside certain transactions entered into by the company prior to the judicial management, on the grounds of being a transaction at an undervalue, being an unfair preference or being an extortionate credit transaction. These powers granted to the judicial manager allow them to avoid transactions that have the result of depleting the company's property to the prejudice of the company and its creditors. These powers are similar to the powers of a liquidator.	No.

However, if the unfair preference is given to an associate, the relevant period is two years. An associate is defined by statute and covers a wide category of people including spouses, family members, relatives, partners, directors, employees and trustees.

Extortionate credit transactions
The liquidator may also apply to the court to challenge the transactions for the provision of credit that were entered into within three years before the commencement of the winding-up, if the transaction was extortionate.

Transactions are considered "extortionate" for this purpose if, having regard to the level of risk in such transactions, require grossly exorbitant payments to be made or are harsh and unconscionable or substantially unfair.

If the liquidator succeeds in proving that the transaction was "extortionate," the court can make various orders, including setting aside the transaction, altering the transaction, or requiring the counterparty to pay monies or give up security.

Floating charges for past value
In relation to floating charges, Section 330 of the Companies Act has the effect of rendering a floating charge on the undertaking or property of the company created within six months of the commencement of the winding-up invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of and in consideration for the charge, unless it is proved that the company immediately after the creation of the charge was solvent.

Any floating charge given by the company in the six-month period will, unless the company was solvent immediately afterwards, be invalid except to the extent that it was given to secure new money. The section invalidates only the floating charge. The debt remains, but only as an unsecured debt.

SINGAPORE

	Winding-Up	Judicial Management	Scheme of Arrangement
COVID-19			
Is state support for distressed businesses available?	Yes. Such support is found in the COVID-19 (Temporary Measures) Act 2020 ("COVID-19 Act"). The provisions in the COVID-19 Act relating to temporary relief for (i) inability to perform contracts and (ii) financially distressed individuals, firms and other businesses came into force on 20 April 2020. The Monetary Authority of Singapore also announced that banks and finance companies in Singapore have committed to help ease the financial strain on small and medium-sized enterprises (SMEs) arising from the need to make principal repayments on their loans during this period, in view of the temporary cash flow constraints that many may face. SMEs may opt to defer principal payments on their secured term loans up to 31 December 2020, subject to banks' and finance companies' assessment of the quality of the SMEs' security. SMEs will also be able to extend the tenure of their loans by up to the corresponding principal deferment period, if they wish. This relief will be available to SMEs that continue to pay interest and are in good standing with their banks and finance companies (not more than 90 days past due as of 6 April 2020). Banks and finance companies may also apply for low-cost funding through a new MAS SGD Facility for loans granted under Enterprise Singapore's SME Working Capital Loan scheme and Temporary Bridging Loan Programme. Banks and finance companies can apply for these funds until the end of December 2020, provided they commit to pass on the savings in funding cost to their SME borrowers. This initiative will potentially lower the interest rates charged to eligible SME borrowers.	Yes. Such support is found in the COVID-19 Act. The provisions in the COVID-19 Act relating to temporary relief for (i) inability to perform contracts and (ii) financially distressed individuals, firms and other businesses came into force on 20 April 2020	Yes. Such support is found in the COVID-19 Act. The provisions in the COVID-19 Act relating to temporary relief for (i) inability to perform contracts and (ii) financially distressed individuals, firms and other businesses came into force on 20 April 2020.

SINGAPORE

Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?

Winding-Up

Stay of winding-up proceedings
For a prescribed period, i.e., six months commencing 20 April 2020, applications for winding-up cannot be made against a contracting counterparty or that counterparty's guarantor. However, the following conditions apply:

(a) the contract must be a type listed in the Schedule to the COVID-19 Act

(b) the contract must have been entered into before 25 March 2020

(c) the obligation must be one that is to be performed on or after 1 February 2020

(d) the inability to perform the obligation must be, to a material extent, caused by a COVID-19 event

(e) the counterparty must serve a notification for relief in accordance with the COVID-19 Act

The contracts listed in the Schedule are:

(a) a performance bond relating to a construction or supply contract

(b) a hire purchase agreement or conditional sales agreement for plant, machinery or fixed assets located in Singapore and used for manufacturing, production or other business purposes, or a commercial vehicle

(c) event contracts

(d) tourism related contracts

(e) construction or supply contracts

(f) a lease or license of non-residential commercial immoveable property

(g) a contract for a loan facility by a bank or finance company licensed under the Singapore Banking Act or the Singapore

Judicial Management

Stay of judicial management proceedings
For a prescribed period, i.e., six months commencing 20 April 2020, applications for a judicial management order cannot be made against a contracting counterparty or that counterparty's guarantor. However, the following conditions apply:

(a) the contract must be a type listed in the Schedule to the COVID-19 Act

(b) the contract must have been entered into before 25 March 2020

(c) the obligation must be one that is to be performed on or after 1 February 2020

(d) the inability to perform the obligation must be, to a material extent, caused by a COVID-19 event

(e) the counterparty must serve a notification for relief in accordance with the COVID-19 Act

The contracts listed in the Schedule are:

(a) a performance bond relating to a construction or supply contract

(b) a hire purchase agreement or conditional sales agreement for plant, machinery or fixed assets located in Singapore and used for manufacturing, production or other business purposes, or a commercial vehicle;

(c) event contracts

(d) supply contracts

(e) tourism related contracts

(f) construction or supply contracts

(g) a lease or license of non-residential commercial immoveable property

(h) a contract for a loan facility by a bank or finance company licensed under the

Scheme of Arrangement

Scheme of arrangement proceedings
For a prescribed period, i.e., six months commencing 20 April 2020, applications to convene a meeting of creditors to be summoned to approve a scheme of arrangement in relation to a contracting counterparty or that counterparty's guarantor cannot be brought. However, the following conditions apply:

(a) the contract must be a type listed in the Schedule to the COVID-19 Act

(b) the contract must have been entered into before 25 March 2020

(c) the obligation must be one that is to be performed on or after 1 February 2020

(d) the inability to perform the obligation must be, to a material extent, caused by a COVID-19 event

(e) the counterparty must serve a notification for relief in accordance with the COVID-19 Act

The contracts listed in the Schedule are:

(a) a performance bond relating to a construction or supply contract

(b) a hire purchase agreement or conditional sales agreement for plant, machinery or fixed assets located in Singapore and used for manufacturing, production or other business purposes, or a commercial vehicle

(c) event contracts

(d) tourism related contracts

(e) construction or supply contracts

(f) a lease or license of non-residential commercial immoveable property

g) a contract for a loan facility by a bank or finance company licensed under the Singapore Banking Act or the Singapore Finance Companies Act

Winding-Up

Finance Companies Act made available to an enterprise and that is secured against commercial or industrial immovable property in Singapore or plant, machinery or fixed asset located in Singapore used for manufacturing, production or other business purposes

An enterprise means (1) an entity having annual turnover (or group annual turnover) of less than SGD 100 million, and (2) which is 30% or more directly or indirectly owned by Singapore citizens and residents.

Notwithstanding the above, a contract in relation to which Section 4 of the International Interests in Aircraft Equipment Act (Cap. 144B) applies will not constitute a scheduled contract.

Where the counterparty serves such a notice and the aggrieved party wishes to challenge the availability of the COVID-19 Act's protections to the counterparty, they can apply for an assessor's determination of the matter.

Higher threshold for statutory demands
In addition, during a prescribed period (i.e., six months commencing 20 April 2020), the monetary thresholds of and deadlines to fulfil statutory demands will also be raised. The monetary threshold for a statutory demand against a Singaporean company will be raised from SGD 10,000 to SGD 100,000, and the statutory deadline to fulfil the statutory demand will be extended from three weeks to six months. However, statutory demands served on a Singaporean company prior to the commencement of the relevant provisions in the COVID-19 Act will not be subject to these revisions.

Judicial Management

Singapore Banking Act or the Singapore Finance Companies Act made available to an enterprise and that is secured against commercial or industrial immovable property in Singapore or plant, machinery or fixed asset located in Singapore used for manufacturing, production or other business purposes

An enterprise means (1) an entity having annual turnover (or group annual turnover) of less than SGD 100 million, and (2) which is 30% or more directly or indirectly owned by Singapore citizens and residents.

Notwithstanding the above, a contract in relation to which Section 4 of the International Interests in Aircraft Equipment Act (Cap. 144B) applies will not constitute a scheduled contract.

Where the counterparty serves such a notice and the aggrieved party wishes to challenge the availability of the COVID-19 Act's protections to the counterparty, they can apply for an assessor's determination of the matter.

Scheme of Arrangement

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Where the counterparty serves such a notice and the aggrieved party wishes to challenge the availability of the COVID-19 Act's protections to the counterparty, they can apply for an assessor's determination of the matter.

SINGAPORE	Winding-Up	Judicial Management	Scheme of Arrangement
	Modified requirements for the offence of insolvent trading Ordinarily, directors of a near-insolvent company that continues trading may be exposed to civil and criminal liability if there was no reasonable expectation of the company being able to make payment (i.e., the offence of insolvent trading) or if there was an intent to defraud (i.e., the offence of fraudulent trading). However, the COVID-19 Act provides that the offence of insolvent trading will not be made out if a debt is in the ordinary course of the company's business, during the prescribed period of six months commencing 20 April 2020 and before the appointment of a judicial manager or liquidator of the company.		
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	N/A	N/A	N/A

SOUTH AFRICA

SOUTH AFRICA

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Can you take security over all types of assets, including working capital?	Yes. Generally, a creditor is able to take security over all types of assets, including working capital. Security can be taken over both movable and immovable property. Security is most commonly effected: • Over land and buildings by the registration of a mortgage bond. • Over corporeal moveable assets (also referred to as tangible assets) by the registration of a special or general notarial bond. It is also possible to grant security over corporeal movable property by means of a pledge, but this is less commonly used because it requires the creditor to maintain possession of the pledged property for the purposes of perfecting the security. There are other specific forms of security for specific assets, such as patents and trade markets, shops, aircraft, etc. • Over incorporeal assets (also referred to as intangible assets) by concluding a pledge and cession in securitatem debiti (a cession for security). Incorporeal assets include claims to receivables, shares or financial instruments, but exclude trademarks, copyright and patents.		
What is the nature of the process?	Business rescue proceedings are regulated in terms of Chapter 6 of the Companies Act 2008 ("**2008 Companies Act**"). The proceedings seek to facilitate the rehabilitation of a company that is "financially distressed" by providing for the temporary supervision of the company and the management of its affairs as well as a temporary moratorium of the rights of creditors against the company, the restructuring and reorganizing of the affairs of the business, property, debt and other liabilities and equities of the company. Furthermore, business rescue provides for the development and implementation of a business rescue plan, which seeks to maximize the likelihood that the company will continue to exist on a solvent basis in the future, or where it is not possible for the company to continue on a solvent basis, to ensure a better return for the company's creditors and shareholders than would result from the (immediate) liquidation of the company.	The winding-up of a company, also known as liquidation, results in the dissolution of that company and the distribution of its assets among the company's creditors according to their ranking. Liquidation proceedings can be either voluntary or compulsory and the process is regulated in terms of different legislation depending on whether the company is solvent or insolvent. Solvent companies are wound up in accordance with the 2008 Companies Act, whereas insolvent companies are wound up in accordance with the provisions of the Companies Act 1973 ("**1973 Companies Act**"). For a **solvent company**, the company may be voluntarily wound up by the shareholders of a company through the adoption of a special resolution. The resolution must be filed with the Companies and Intellectual Property Commission.	This is a voluntary process, provided for in section 155 of the 2008 Companies Act whereby the board of directors or the liquidator appointed to wind up a company may propose an arrangement or a compromise of its financial obligations to all, or any class of, its creditors. A compromise under this section can also provide for a special or alternative means of winding up a company or for the takeover of a company and the termination of the process of the winding-up on the basis of, for example, an acquisition of all its issued shares and its creditors' claims, subject to the discharge of the provisional, or the setting aside of the final, winding-up order.

SOUTH AFRICA

Business rescue

In order for business rescue proceedings to be initiated, the company must be capable of being rescued or it must result in a better outcome for creditors or shareholders than if the company were to be liquidated. Business rescue proceedings can be initiated in one of two ways:

- voluntarily, by way of a resolution approved by the board of directors of the company concerned
- compulsorily, upon application to the court by any person who is an "affected person" in relation to the company concerned

Liquidation

The resolution must state whether the winding-up is a members' voluntary winding-up or a creditors' voluntary winding-up. In the case of a voluntary winding-up by the company:

- The company must arrange for security for the payment of the company's debts or must obtain consent from the master of the court to dispense with such security.
- The resolution, while not strictly necessary, usually also makes provision for the appointment of a liquidator.

The compulsory winding-up of a solvent company is initiated through an application to a competent court, accompanied by an affidavit by the party making the application. A court, with jurisdiction, may order that a solvent company be wound up in the following scenarios:

1. The company has passed a special resolution that it will be wound up by the court.
2. The company has applied to the court to have its voluntary winding-up continued by the court.
3. The business rescue practitioner has applied for liquidation on the grounds that there is no reasonable prospect of the company being rescued.
4. The company or one or more directors or shareholders of the company have applied to the court for an order to wind up the company based on various grounds.
5. A shareholder has applied, with leave of the court, for an order to wind up the company on the grounds that the directors or other persons in control of the company are acting in a fraudulent or otherwise illegal manner, or that the company's assets are being misapplied or wasted.

Compromise (creditors' scheme of arrangement)

Section 155 prescribes a process whereby:

1. All creditors, or a class of creditors, of the company and the Companies and Intellectual Property Commission must be provided with a copy of the proposal and notice of a meeting to consider the proposal (section 155 also prescribes the content of the notice).
2. A meeting must be held where all creditors, or each class of creditors affected by the proposal, may vote on the proposal.
3. If the proposal is approved by the creditors voting at the creditors' meeting(s), the company may apply to the court to approve the proposal, thereby making it an order of court that will be binding on all of the company's creditors or all members of the relevant class of creditors.

6. The commission has applied to the court for an order to wind up the company.

An **insolvent company** may be wound up by the court or voluntarily by the company's creditors or its members through the passing of a resolution.

A court may grant an order for winding up an insolvent company if one of the following has occurred:

1. The company has resolved by special resolution that it be wound up by the court;
2. The company commenced business before it was entitled to commence business;
3. The company has not commenced its business within a year from its incorporation, or has suspended its business for a whole year;
4. In the case of a public company, its members have decreased to below seven;
5. 75% of the issued share capital of the company has been lost or has become useless for the business of the company;
6. The company is unable to pay its debts;
7. Where the company is an external company, the company has been dissolved or has ceased to carry on business in the country in which it has been incorporated; or
8. It appears to the court that it is just and equitable that the company be would up.

If the application to wind up an insolvent company is successful, the company will be declared insolvent and the company will no longer proceed to operate its business.

SOUTH AFRICA

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
What is the solvency requirement?	The company must be in "financial distress." This means that the company must appear to be reasonably unlikely to pay all of its debts as they become due and payable within the immediately ensuing six months. A company will also be considered to be in "financial distress" if it appears reasonably likely that the company will become insolvent within the immediately ensuing six months. Regardless of the nature of the "financial distress," for business rescue proceedings to be initiated there must either be a reasonable prospect of rescuing the company or the outcome of the business rescue proceedings must deliver a better outcome for creditors or shareholders than if the company were to be liquidated.	A company does not have to be insolvent for liquidation proceedings to be initiated (see section above on solvent companies). In the case of an insolvent company, a company will be deemed insolvent for the purposes of liquidation proceedings when its liabilities, fairly estimated, exceed its assets, fairly valued and/or it is unable to pay its debts as and when they fall due in the ordinary course of business. The 1973 Companies Act provides a number of circumstances in which a competent court can wind up an insolvent company, which include the following: • The company has passed a special resolution resolving for the winding-up of the company. • The company commenced business before it was entitled to commence business. • The company has not commenced its business within a year from its incorporation, or has suspended its business for a whole year. • In the case of a public company, the number of members has been reduced below seven. • 75% of the issued share capital of the company has been lost or has become useless for the business of the company. • The company is unable to pay its debts. • In the case of an external company, that company is dissolved in the country in which it has been incorporated or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs. • It appears to the court that it is just and equitable that the company should be wound up.	There is no solvency requirement. The company must not already be engaged in business rescue proceedings. However, this process can still be followed if the company has commenced a winding-up or liquidation process.

SOUTH AFRICA

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Is there a requirement to demonstrate COMI ("centre of main interests")?	Only companies incorporated in South Africa and foreign companies that have subsequently been registered as a domestic company in South Africa can be placed into liquidation or business rescue in South Africa under the 2008 Companies Act or the 1973 Companies Act. These processes would not apply to a foreign company registered as an "external company" in South Africa.		Schemes of arrangement under the 2008 Companies Act can only be used in relation to companies incorporated in South Africa and foreign companies that have, subsequent to their incorporation, been registered as a domestic company in South Africa. These processes would not apply to a foreign company registered as an "external company" in South Africa.
Is restructuring of both secured and unsecured claims possible?	Yes, but such a rearrangement must be provided for in the business rescue plan and subsequently approved by the creditors.	A liquidator may propose an arrangement or compromise with the company's creditors. This would need to be implemented in accordance with the provisions of section 155 of the 2008 Companies Act, which provides for a scheme of arrangement with creditors. This provision is available for both solvent and insolvent companies. See responses under the heading "Compromise" for more detail.	Yes. Each class of creditors affected by the proposal will need to vote on and approve the proposed scheme of arrangement. Thus, groups of creditors with similar rights would be formed, including secured creditors and different classes of unsecured creditors.
Is there a classification of creditors and shareholders?	Yes. 1. payment of the business rescue practitioners' remuneration and all other costs of the business rescue proceedings 2. pre-commencement secured creditors 3. any employees' claims for compensation or remuneration, where such claims arise during the business rescue proceedings 4. post-commencement finance (PCF) creditors (PCF being any finance provided to the company after the start of business rescue proceedings); these creditors will be ranked in the order in which they were incurred, irrespective of whether they are secured or not 5. unsecured creditors	Yes, in general terms: 1. Secured creditors — are entitled to be paid first from the proceeds of a sale of the secured property in their order of preference, subject to payment of the costs of maintaining and realizing the secured property and a proportionate share of the liquidator's fees and costs. 2. Preferent creditors — unsecured preferent claims rank for payment out of the free residue of the estate before the claims of concurrent creditors in the following order of priority: 2.1. costs of the liquidation process, salaries and wages owed to employees, taxes and certain statutory obligations	Yes. For the purpose of assessing the merits of a proposed scheme, the ranking of creditors and shareholders for distributions from an insolvent estate is taken into account, being (in very general terms): 1. Secured creditors — are entitled to be paid first from the proceeds of a sale of the secured property in their order of preference, subject to payment of the costs of maintaining and realizing the secured property and a proportionate share of the liquidator's fees and costs. 2. Preferent creditors — unsecured preferent claims rank for payment out of the free residue of the estate before the claims of concurrent creditors in the following order of priority:

SOUTH AFRICA

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
	For the purposes of creditors' voting rights on a business rescue plan, section 145 (4) of the 2008 Companies Act classifies creditors as secured, unsecured and concurrent creditors. A secured or unsecured creditor has a voting interest equal to the value of the amount owed to that creditor by the company. A concurrent creditor who would be subordinated in a liquidation has a voting interest, as independently and expertly appraised and valued at the request of the practitioner, equal to the amount, if any, that the creditor could reasonably expect to receive in a liquidation of the company. There is a further classification of creditors as "independent creditors," which is: • a creditor of the company, which may include an employee of the company who is owed any remuneration, reimbursement for expenses or another amount of money relating to employment and which became due and payable before the business rescue proceedings • not related to the company, a director or the business rescue practitioner	2.2. claims secured by a general notarial bond 3. Concurrent creditors — have claims that are neither secured nor preferent. Distributions to shareholders generally rank behind those of creditors.	2.1. costs of the liquidation process, salaries and wages owed to employees, taxes and certain statutory obligations 2.2. claims secured by a general notarial bond 3. Concurrent creditors — have claims that are neither secured nor preferent. In a winding-up scenario, distributions to shareholders generally rank behind creditors' claims.
Is there a requirement for voting approvals by shareholders?	Generally, it is only the creditors of the affected company who have the right to vote on the business rescue plan. However, where the business rescue plan would alter and/or affect the rights of the shareholders and other security holders, they will have a right to vote on the business rescue plan.	This depends on the type of liquidation process being followed. For voluntary liquidation proceedings, a special resolution must be passed in order to place the company in liquidation. However, where the company is placed in compulsory liquidation, no resolution is required. Once the company is in liquidation, the shareholders have no voting power unless they are also creditors.	Generally, no (except to the extent that shareholders have a claim as creditors of the company). However, shareholders would be required to approve a proposed compromise if the proposal would also affect the rights of shareholders. For example, by diluting their shareholding or amending the rights attaching to existing shares.
Is there a requirement for voting approvals by shareholders' creditors?	No.	No.	No.

SOUTH AFRICA

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Is there an ability to bind minority dissenting creditors?	Yes. A business rescue plan will be approved preliminarily if it was supported by the holders of more than 75% of the creditors' voting interests that were voted, and the votes in support of the proposed plan included at least 50% of the independent creditor's voting interests, if any, that were voted. A business rescue plan that has been adopted is binding on the company as well as on each of its creditors and every holder of the company's securities, regardless of whether the person was present at the meeting, voted in favor of the plan or, in the case of creditors, has proved its claim. If the business rescue plan was rejected, a creditor may make a binding offer to purchase the voting interests of one or more persons who opposed the adoption of the business rescue plan, at a value independently and expertly determined to be the fair and reasonable estimate of the return that such person or persons would receive if the company were to be placed in liquidation.	Yes. Any court order to wind up the company will be final and binding on all creditors. In liquidating and distributing the company's assets the liquidator may also enter into a scheme of arrangement/compromise with creditors in accordance with section 155 of the 2008 Companies Act — see further under "Compromise."	Yes. A proposal will be adopted by the creditors of a company, or a class of creditors, if it is approved by a majority (in number) of creditors present and voting at a meeting of those creditors called for that purpose and the claims of the creditors approving the proposal represent at least 75% in value of all creditors' claims, or claims of that class of creditors, present and voting at a meeting of those creditors called for that purpose. If the proposal is approved by the creditors voting at the creditors' meeting(s), the company must (in order to make the compromise final and binding on all creditors) apply to a competent court in order for the compromise to be sanctioned. A dissenting creditor can oppose this application to a competent court but in order to be successful with such opposition, a creditor must show that it would be just and equitable for the court to reject the scheme.

SOUTH AFRICA

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
COMMENCING THE PROCESS			
Who can commence?	Business rescue can be initiated in one of two ways: 1. Whereby the company's board of directors passes a resolution by a majority vote to commence business rescue proceedings in respect of the company concerned, provided that the board has reasonable grounds to believe that the company is financially distressed and that there is a reasonable prospect of rescuing the company. It must be noted that the board of directors cannot pass a resolution to commence business rescue proceedings where steps to liquidate the company have already been initiated. 2. An "affected person" may apply to court for an order placing the company in business rescue. An "affected person" includes a creditor of the company, a shareholder, a registered trade union representing the company's employees and the individual employees themselves. For an order to be granted, the affected person must satisfy the court that the company is financially distressed or has failed to pay any amount due in respect of employment-related matters, or that it is otherwise just and equitable to commence the business rescue proceedings and that there is a reasonable prospect of rescuing the company.	A voluntary liquidation can be commenced through a special resolution by the company's members or creditors. A compulsory liquidation is initiated through an application to a competent court, accompanied by an affidavit. This type of application is typically brought by a creditor. However, the company itself, one or more of its members and the master of a competent court all have the requisite standing to bring such an application.	The board of directors or the liquidator appointed to wind up a company.
Is shareholders' consent required to commence proceedings?	No. However, a shareholder is an "affected person" and may therefore commence business rescue proceedings.	This depends on the type of liquidation process being followed. Where liquidation proceedings are initiated voluntarily by the company, the shareholders will have to pass a special resolution placing the company in liquidation. However, the shareholders cannot bring a voluntary application by way of resolution of the shareholders as a means to frustrate the process after an order to wind-up the company has been brought[1].	No.

1 See for example, Furniture Bargaining Council v AXZS Industries (Pty) Ltd trading as Don Elly Enterprises [2020] 1 All SA 391 (GJ).

SOUTH AFRICA	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Is there an ability to consolidate group estates?	Generally, no.	Yes, by way of an application to the high court.[2]	No, voting would need to take place at the level of each company within the group.
Is there any court involvement?	There will only be court involvement for compulsory business rescue proceedings, whereby an "affected person" makes an application to a competent court to place the company in business rescue.	Yes. A court with jurisdiction may place a company in liquidation where an interested party has made an application to a competent court in this regard, regardless of whether the company is solvent or insolvent. Furthermore, there will be court involvement in certain scenarios, such as if the liquidator wishes to recover assets that were disposed of prior to the liquidation proceedings and that should not have been disposed of.	Yes, if the proposal is approved by the creditors voting at the creditors' meeting(s), the company may apply to the court to sanction and approve the proposal, thereby making it final and binding on all of the company's creditors or all members of the relevant class of creditors. The court may sanction the compromise as set out in the adopted proposal if it considers it just and equitable to do so, with regard to: • The number of creditors of any affected class of creditors who were present or represented at the meeting and who voted in favor of the proposal. • In the case of a compromise in respect of a company being wound up, the report from the master of a competent court on suspected contraventions or offences and whether or not any director or officer, or past director or officer, of the company is or appears to be personally liable for damages or compensation to the company or for any debts or liabilities of the company.

2 See for example, Allers and Others v. Fourie No and Others (491/05) [2006] ZASCA 152 (21 September 2006).

SOUTH AFRICA

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Who manages the debtor?	The business rescue practitioner. If the board of a company has commenced business rescue proceedings, the company must (within five days of the commencement of business rescue proceedings) appoint a suitable business rescue practitioner. Where an "affected person" commences business rescue proceedings through a court application, the relevant person bringing the application will, in the application itself, propose a suitable business rescue practitioner and the court will make the appointment as part of the proceedings. The business rescue practitioner will then effectively take over the management and control of the company and the company will henceforth only be able to proceed with any substantial process or action with the approval of the business rescue practitioner.	The liquidator. The liquidator's primary obligation is to see to the winding-up of the company. This requires the liquidator to: • take possession of the company's assets • realize such assets • apply the proceeds towards the payment of the costs of the liquidation proceedings as well as to the creditors in their order of ranking and thereafter distribute what is left over to the members of the company Therefore, the company's property will be in the custody of the liquidator from the date of their appointment. The liquidator holds a fiduciary responsibility to the company, its members and its creditors and must therefore act in their collective best interest. While the debtor company does not lose its corporate identity or title to its assets, from the effective date of the winding-up, the powers of the directors cease and the board would no longer have any power to manage the company. However, in a voluntary winding-up, the liquidator, creditors or members may sanction a continuance of directors' powers.	This depends on whether or not winding-up (liquidation) proceedings have been commenced in respect of the company. If no such proceedings have been commenced, the board of directors will continue to manage the company, whereas if the company is in the process of being wound up (whether solvent or insolvent) the liquidator would take control of the business and the board of directors would no longer have the power to manage the company unless, in a voluntary winding-up, the liquidator, creditors or members sanction a continuance of directors' powers.
What is the level of disclosure of the process to voting creditors?	The company's creditors and securities holders are entitled to participate in the business rescue proceedings. The business rescue practitioner will provide sufficient information to all affected parties to enable them to participate in the business rescue proceedings. The voting creditors will also be provided with the proposed business rescue plan, which will contain the business rescue practitioner's proposal on how the company will be nurtured back to financial health, on which plan they will eventually vote.	Transparency is essential for liquidation proceedings, especially because there is a risk of contribution from certain creditors if there are insufficient funds or assets available to cover the costs of the administrative expenses of liquidation. In terms of the 1973 Companies Act, the master of a competent court must, upon receipt of a copy of any winding-up order lodged with them, give notice of such liquidation proceedings in the Government Gazette. Where there has been a voluntary winding-up of an	There are significant disclosure obligations to the company's creditors. All creditors that would be affected by the proposed arrangement or compromise, irrespective of the nature of their claims against a company, must be provided with a full and proper explanation in respect of the proposed scheme. Where the a winding-up process has been commenced and the proposed scheme involves the setting aside of the winding-up order or proceedings, the disclosure should, to the extent possible, inform creditors of the dividends that they are likely to receive in

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Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Further to the above, creditors can also establish a creditors' committee to assist the business rescue practitioner.	insolvent company, the company must, within 28 days of the registration of that resolution, lodge a copy of the resolution with the master of a competent court and give notice of the winding-up in the Government Gazette. Furthermore, to provide for continued transparency and disclosure throughout the process, regular creditor and member meetings must be held. In addition, in terms of the Insolvency Act 1936 ("Insolvency Act"), within six months of being appointed the liquidator must submit to the master of the court a liquidation and distribution account of the property in the estate available for payment to creditors.	terms of the proposal as contrasted with those they are likely to receive if the winding-up process were to be completed. If the scheme includes an acquisition of shares in the company, the information provided to the shareholders and/or creditors should include the price at which the purchaser would obtain shares in the company. If the company is listed on a securities exchange, additional disclosure requirements may apply.

What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?

The processes described under the Companies Act are available only in relation to companies incorporated or registered under the South African Companies Act, including profit, non-profit, state-owned (where registered in terms of the 2008 Companies Act) and personal liability companies. Some state-owned entities are governed by their own legislation and their winding-up will be dictated by that particular legislation. A trust or a partnership, which does not constitute a company for the purposes of the 2008 Companies Act, cannot be liquidated or placed into business rescue. Rather, where a trust or partnership is insolvent, it (or, more correctly, the estates of the trustees/partners) will be sequestrated in accordance with the Insolvency Act, which applies to all natural persons and unincorporated associations, among others.

In terms of the Insurance Act 2017, insurance companies may be placed in business rescue or liquidation in terms of the provisions of the 2008 companies, subject to certain specifications. For example, for both business rescue and liquidation proceedings, the Prudential Authority (a regulatory body established in terms of the Financial Sector Regulations Act 2017) may make an application to a competent court to place an insurance company in business rescue or to have it wound up. Furthermore, a competent court may only grant an order placing an insurance company in business rescue or liquidation if the Prudential Authority has been notified.

The insolvency provisions under the Companies Act are modified by the Banks Act 1990 in relation to companies that are registered banks. In terms of the Banks Act, the Prudential Authority is entitled to make an application to a competent high court for the liquidation of a registered bank, and to oppose any application made by another person to have a bank wound up. In terms of the Banks Act 1990, the Prudential Authority is entitled to apply for the liquidation of any entity that fails to comply with a repayment directive issued by the registrar of banks pursuant to the entity conducting the business of a bank in contravention of the Banks Act 1990. Furthermore, only a person recommended by the Prudential Authority may be appointed as a liquidator of a bank. The Banks Act also allows the Minister of Finance (in consultation with the Prudential Authority) to place a bank under curatorship. While not excluded from the provisions of the Companies Act, additional special regulations apply to certain regulated entities operating in the financial sector (under the Financial Sector Regulation Act 2018).

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	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
How long does it generally take for a creditor to commence the procedure?	A creditor may only initiate business rescue proceedings by making an application to a court with the requisite jurisdiction. Unless an urgent application can be justified, the ordinary court procedure may take between six and 12 months to complete.	A creditor may commence liquidation proceedings in one of two ways, namely by special resolution of the shareholders of the company providing for a winding up by the company's creditors or by way of application to court. Depending on the approach adopted, the time will vary. An application to a court to place a company in liquidation may take between six and 12 months. On the other hand, a voluntary liquidation simply requires the shareholders to pass a special resolution and then to register the resolution, among other things, with the Companies and Intellectual Property Commission, and is therefore envisaged to take approximately one to two months to initiate.	This is generally not applicable. Although a creditor may make a proposal to the company, the board of directors or liquidator of the company would be required to submit the proposal to its creditors and the commission. No notice period is prescribed for creditors' meetings to be called. However, it has been suggested that (as a minimum) notice periods should comply with the minimum notice period prescribed for shareholder meetings (at least 10 business days).
EFFECT OF PROCESS			
Does the debtor remain in possession with the continuation of incumbent management control?	The company remains in possession, however, the business rescue practitioner takes over the management and control of the company and any substantial process or action of the company will require approval from the business rescue practitioner.	No. The company may not continue with business, except insofar as it may be necessary for its beneficial winding-up.	Generally, prior to approval of the proposal, creditors would be entitled to attach security in accordance with their rights under the relevant agreement and insolvency laws. Once the proposal is approved, the debtor would remain in possession of specified assets and continue to manage its business to the extent contemplated in the proposal approved by the creditors or relevant classes of creditors.
What is the stay/moratorium regime (if any)?	The commencement of business rescue gives rise to the imposition of a moratorium on all current and future claims against the company. This includes claims in relation to property belonging to the company or lawfully in its possession. The moratorium means that no legal proceedings, including any enforcement actions against the company or in respect of property belonging to the company or lawfully in its possession, may be commenced or proceeded with against the company.	The company or a creditor may apply to court to stay proceedings against the company before the winding-up order is made. When a court has made an order for the winding-up of a company or a resolution has been passed for the voluntary winding-up of a company: • all civil proceedings by or against the company concerned shall be suspended until the appointment of a liquidator	As agreed in the proposal. Consequently, the moratorium would not commence until the proposal is approved. Often, an interim moratorium or standstill is agreed with major creditors pending the formal meeting of all creditors to approve the proposal.

SOUTH AFRICA	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
	Further to the above, if a company in business rescue wishes to dispose of any property over which another person has any existing security, the company must: • obtain the prior consent of that other person, unless the proceeds of the disposal would be sufficient to fully discharge the indebtedness protected by that person's security • promptly pay to that other person the sale proceeds attributable to that property up to the amount of the company's indebtedness to that other person or provide security for the amount of those proceeds, to the reasonable satisfaction of that other person	• any attachment or execution put in force against the estate or assets of the company after the commencement of the winding-up shall be void Any person who instituted legal proceedings against a company and whose legal proceedings were suspended by the winding-up procedure and any person who intends to institute legal proceedings against the company shall, within four weeks after the appointment of the liquidator, give the liquidator at least three weeks' notice before continuing or commencing legal proceedings against the company.	
Is there a provision for debtor-in-possession super-priority financing?	After business rescue proceedings have been initiated, the company may obtain post-commencement funding to enable the company to continue trading. Post-commencement finance does not enjoy a super priority but can be secured by using an asset of the company that is not already encumbered and may be recovered, whether secured or not secured, after the remuneration and expenses of the business rescue practitioner, employee and claims of secured creditors have been paid.	N/A	There is no specific provision for this; however, super-priority financing may be agreed as part of the proposal to be approved by the creditors.
Can the procedure be used to implement a debt-to-equity swap?	Yes, as long as it is provided for in the business rescue plan and the business rescue plan has been approved by the creditors.	No. The consequence of liquidation proceedings is that the company is dissolved; therefore, a debt-to-equity swap would not be possible.	Yes, a debt-equity swap may be incorporated into a proposal under section 155 of the 2008 Companies Act but this may require additional approvals (including shareholder approvals) to be obtained. Unless otherwise stated in a company's memorandum of incorporation, the board of directors may issue shares in the company to the extent that there are authorized and unissued shares available to be issued. Shareholder approval by special resolution will be required if:

SOUTH AFRICA	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
			• There are insufficient authorized and unissued shares available to implement the compromise, to increase the number of authorized shares in the company. • The compromise proposes the issuance of shares, securities convertible into shares or rights exercisable for shares and the voting power of the shares that are issued or issuable as a result of compromise will be equal to or exceed 30% of the voting power of all the shares of that class held by existing shareholders. A separate procedure under section 114 of the 2008 Companies Act must be followed for a scheme of arrangement with existing holders of securities issued by the company. In the case of private companies, it may further be necessary to procure a waiver of pre-emptive rights held by existing shareholders in relation to any new shares issued by the company.
Are the proceedings recognized abroad?	No.	This will differ from jurisdiction to jurisdiction.	Generally, releases are only available from creditors or affected groups of creditors, which are afforded an opportunity to vote on the proposal. However, a third party may be included in the proposed scheme of arrangement by agreement between the third party, the company and the requisite majority of creditors.[3]
Has the UNCITRAL Model Law been adopted?	N/A	In 2000, the legislature passed a South African version of the UNCITRAL Model Law, called the Cross-Border Insolvency Act. The act provides for a "designation clause," which provides that the act will only be applicable to countries that have been designated by the minister of justice. To date, the minister of justice has not designated any countries to which the act will apply. Therefore, for the time being, cross-border insolvency matters are regulated in terms of common law.	

3 Are the proceedings recognized abroad?

SOUTH AFRICA

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
How long, complex and expensive is the process?	In terms of the 2008 Companies Act, it is envisaged that the business rescue process should not last longer than three months and, depending on the circumstances, the possibility exists for the business rescue process to end in a shorter period. In practice, however, this is rarely ever the case and business rescue practitioners regularly require extensions of this three-month period, especially for high-value or complex cases. The business rescue proceedings will come to an end in the event of the following: 1. A court sets aside the order that began the proceedings. 2. A court converts the proceedings to liquidation proceedings. 3. The business rescue practitioner files a notice of termination of business rescue proceedings with the Companies and Intellectual Property Commission. 4. The business rescue practitioner files a notice of substantial implementation of the business rescue plan with the Companies and Intellectual Property Commission. The costs will depend on the size and complexity of the company in business rescue and the claims therein.	The duration of liquidation proceedings, regardless of how they were initiated, depends on the nature and complexity of the transactions with which the company was involved and can take anywhere from between six months and several years to complete.	It typically takes four to eight months to agree and sanction a scheme of arrangement with creditors, but the timing would depend on the complexity of creditors' claims of needing to be rescheduled and the complexity of the proposed scheme.

SOUTH AFRICA	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Is there a mandatory set-off of mutual debts on insolvency?	There is no mandatory set-off but a set-off against any claim made by the company in any legal proceedings, irrespective of whether those proceedings commenced before or after the business rescue proceedings, is possible.	No. No set-off of claims can take place unless the set-off applied in the ordinary course of business prior to the liquidation of the company.	No, there is no provision for mandatory set-off. In addition, the Insolvency Act provides that a liquidator may choose whether or not to abide by contractual arrangements for set-off that were not effected in the ordinary course of business, except that set-off shall be effective and binding on the insolvent estate and the liquidator if it takes place: 1. between an exchange or a market participant and any other party in accordance with the rules of such exchange 2. in terms of a "master agreement" as defined in the Insolvency Act
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	No, the company may not continue with its business once it has been placed into liquidation, except insofar as it may be necessary for its beneficial winding-up.	Yes.

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	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)

OTHER FACTORS

Are there any wrongful or insolvent trading restrictions and what is the directors' liability?

The 2008 Companies Act requires that a company must not carry on business recklessly, with gross negligence or with the intent to defraud any person.

Under South African law, directors of a company have a general duty to act in good faith, for proper purpose and in the best interest of the company. These fiduciary duties of directors require them to act honestly and in good faith, and to exercise care, skill and diligence in order to promote the interests of the company and to have a rational basis for decisions made in their role as a director. The 2008 Companies Act imposes personal liability for directors who fail to uphold their duties for loss suffered or incurred by the company or by other affected persons to whom the relevant duty was owed.

What is the order of priority of claims?

Business rescue

1. payment of the business rescue practitioners' remuneration and all other costs of the business rescue proceedings
2. pre-commencement secured creditors
3. any employees' claims for compensation or remuneration, where such claims arise during the business rescue proceedings
4. post-commencement finance (PCF) creditors (PCF being any finance provided to the company after the start of business rescue proceedings); these creditors will be ranked in the order in which they were incurred, irrespective of whether or not they are secured
5. unsecured creditors

Liquidation

1. Secured creditors — are entitled to be paid first from the proceeds of a sale of the secured property in their order of preference, subject to payment of the costs of maintaining and realizing the secured property and a proportionate share of the liquidator's fees and costs.
2. Preferent creditors — unsecured preferent claims rank for payment out of the free residue of the estate before the claims of concurrent creditors in the following order of priority:
   - 2.1. costs of the liquidation process, salaries and wages owed to employees, taxes and certain statutory obligations
   - 2.2. claims secured by a general notarial bond
3. Concurrent creditors — have claims that are neither secured nor preferent.

Distributions to shareholders generally rank behind those of creditors.

Compromise (creditors' scheme of arrangement)

For the purpose of assessing the merits of a proposed scheme, the ranking of creditors and shareholders for distributions from an insolvent estate is taken into account, being (in very general terms):

1. Secured creditors — are entitled to be paid first from the proceeds of a sale of the secured property in their order of preference, subject to payment of the costs of maintaining and realizing the secured property and a proportionate share of the liquidator's fees and costs.
2. Preferent creditors — unsecured preferent claims rank for payment out of the free residue of the estate before the claims of concurrent creditors in the following order of priority:
   - 2.1. costs of the liquidation process, salaries and wages owed to employees, taxes and certain statutory obligations
   - 2.2. claims secured by a general notarial bond
3. Concurrent creditors — have claims that are neither secured nor preferent.

Distributions to shareholders generally rank behind those of creditors.

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	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Are there any pension liabilities?	In a business rescue scenario, the company's obligations in respect of any retirement fund to which it contributes on behalf of employees continues and the company continues to bear liability for non-compliance with its obligations. In particular, the obligations under the rules of the retirement fund and section 13A of the Pension Funds Act 1956 to contribute to the fund on behalf of employees continues.	Creditors of the company have no claim on employees' pension fund assets since these are assets of the pension fund, which is a separate legal person from the employer. The insolvent company's liability to any retirement funds in which it participates is usually limited to any contributions that were unpaid by it at the date of liquidation. Any such liability would constitute a preferent claim against the company. In the (relatively unlikely) event that the insolvent company sponsors a defined benefit pension fund, the company's insolvency would trigger a termination of the fund. • If the fund were in deficit at liquidation, the company would become liable for a debt equal to the value of the active members' statutory minimum benefits and the cost of buying out deferred pensioners' and pensioners' benefits with annuities less the value of the assets of the plan at termination date (section 30(3) of the Pension Funds Act 1956). This amount would constitute a non-preferent claim. • If the fund were in surplus at liquidation, the surplus may be used to meet unpaid contributions by the employer but would otherwise be used to benefit fund members.	
Is it possible to challenge prior transactions?	If at any time during the business rescue proceedings the business rescue practitioner concludes that there is evidence in the dealings of the company before the business rescue proceedings began of, among others, "voidable transactions," the business rescue practitioner must take any steps necessary to rectify the matter and direct management of the company to take appropriate steps. The 2008 Companies Act does not define what constitutes a voidable transaction. Therefore, the Insolvency Act has been said to apply in this instance with respect to "impeachable transactions," including: • disposition without value • voidable preference • undue preference • conclusive dealings	Yes. The liquidator has the means of recovering certain property alienated by the company before its winding-up and the liquidator may apply to the court to set aside certain dispositions made by the company before winding-up. These are referred to as "impeachable transactions" and include the following: • dispositions without value • voidable preference • undue preferences • collusive dealings	No. Prior transactions are more likely to be challenged in the context of liquidation or business rescue proceedings. Please see further detail in response to this question under "Liquidation."
Is state support for distressed businesses available?	Generally, no, unless the National Treasury has agreed to guarantee the debt of a specific state-owned entity and this has been approved in accordance with the applicable public finance legislation. In the context of the COVID-19 global pandemic, certain support has been made available by the state and the private sector to assist distressed businesses. This is discussed in further detail below.		

COVID-19

Is state support for distressed businesses available?

A number of government-backed and private debt relief finance schemes have been introduced in response to the COVID-19 pandemic, particularly to assist Small, Medium and Micro Enterprises (SMMEs) in South Africa. Distressed businesses are being provided support by way of loans, grants and/or tax relief. This is discussed briefly below:

The Department of Small Business Development has introduced three initiatives to assist SMMEs during the COVID-19 crisis, namely:

1. **Debt relief fund** — The fund is to provide "soft-loan" funding to qualifying SMMEs for a period of six months, commencing 1 April 2020. The objective is to provide relief for qualifying SMMEs for their existing debts and payments and to assist these qualifying SMMEs to continue with the acquisition of raw materials and payment of both labor and operational costs during the COVID-19 pandemic.
2. **Business growth/Resilience facility** — This facility seeks to enable continued participation of SMMEs in supply value-chains, in particular those who manufacture (locally) or supply various products that are in demand, emanating from the current shortages due to COVID-19 pandemic. This facility offers working capital, stock, bridging finance, order finance and equipment finance.
3. **The spaza shop support scheme** — This has been established to provide seed capital and other necessary business tools to shop owners in order to allow them to continue to provide essential goods during and after the lock-down in South Africa in response to the COVID-19 crisis. This includes support in the form of loans.

Further government supported debt relief initiatives that have been introduced in response to the COVID-19 crisis include the following:

4. **NEF COVID-19 fund** — This is a ZAR 200 million fund established by the national empowerment fund together with the Department of Trade and Industry to provide ZAR 500,000 to ZAR 10 million concessionary loans for black-owned businesses to purchase machinery, equipment and raw materials and to fund other working capital requirements for the manufacture and supply of medical masks, sanitizers, dispensers and related healthcare products. Businesses that benefit under the NEF COVID-19 fund will be receive a 12 month repayment holiday to help stabilize businesses. The loans will be offered at 0% interest for the first year and thereafter at 2.5% per annum and the loans will be repayable over a maximum term of 60 months.
5. The Industrial Development Corporation has provided a ZAR 3 billion relief facility for industrial funding. The facility is directed towards vulnerable South African-owned businesses and aims to extract funding for companies critical to fighting the virus and its economic impact. ZAR 500 million will be allocated towards trade finance to import essential medical products and ZAR 700 million facility will be allocated for working capital, equipment and machinery.
6. **Temporary employer-employee relief scheme** — The scheme allows employers that made contributions to the unemployment insurance fund and who have since lost income as a result of temporary closure of that employer's business due to the COVID-19 pandemic, to access special unemployment benefits for the period of the national disaster by allowing employers to claim partial payment of salaries from the unemployment insurance fund on behalf of its employees.

In addition to the general schemes above, there are a number of industry specific initiatives, for example aimed at businesses in tourism or agricultural sectors. Further to state assistance, a number of private initiatives in response to the COVID-19 pandemic have also been introduced to assist SMMEs with concessionary loans including the South African Future Trust and the Sukuma Relief Program.

SOUTH AFRICA

Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)

Tax relief:

A **draft** Disaster Management Tax Relief Bill is currently under consideration which will contemplate, among others:

- **Employment tax incentive** — whereby the government would provide a monthly tax subsidy over the next four months.
- **Deferral of employees tax payment** — this would allow SMMEs to defer 20% of their employee tax liability (the other 80% is expected to be paid) for the next four months without any penalties.
- **Deferral of provisional tax liability** — this would allow SMMEs to defer a portion of their provisional tax payments without incurring penalties or interest for a period of 12 months from 1 April 2020 to 31 March 2021.

Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?

- The Prudential Authority (the prudential regulatory arm of the South African Reserve Bank) has amended Directive 7 of 2015 issued under the Banks Act, 1990, such that loans that are restructured as a result of the impact of the COVID-19 pandemic will not attract a higher capital charge. This amendment covers loans to households, small and medium sized businesses, corporates and specialized lending.
- The Companies and Intellectual Property Commission (CIPC) issued a directive that states that it will not invoke its powers under section 22 of the Companies Act, 2008 (in terms of which the CIPC issues compliance notices to businesses believed to be carrying on activity recklessly, with gross negligence or with a fraudulent purpose) where a company is temporarily insolvent and still carrying on business or trading (if business conditions are related to the COVID-19 pandemic). This relief is expected to last up to 60 days after the declaration that the national state of disaster has been lifted.
- "Payment holidays:"
  - A number of private banks (with the support of government but no obligation on any bank) have offered "payment holidays" to individuals and businesses that are impacted by the COVID-19 pandemic.
  - The **SEFA-Debt Restructuring Facility** was established by the Small Enterprise Finance Agency to provide a payment moratorium/holiday for a maximum period of six months to qualifying SEFA-funded SMMEs that are negatively affected by the COVID-19 pandemic in order to reduce the instalment burden of loan obligations on the affected SEFA-SMMEs
- Various exemptions to the Competition Act have been granted for the benefit of businesses providing essential services during lockdown and relating to COVID 19 relief efforts.

Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.

No announcements regarding any reform of the insolvency regime had been made at the time of writing.

UPDATED MAY 5, 2020

SPAIN

SPAIN

	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
INITIAL CONSIDERATIONS			
Can you take security over all types of assets, including working capital?	The relevant debt restructuring agreement may contemplate the granting of security. Please note that this granting of security may be subject to clawback within later insolvency proceedings if it is considered to have damaged the debtor's assets. In particular, there is a presumption that such damage exists when collateral is granted as security for obligations that had originated previously. Clawback will not apply if the debt restructuring agreement contemplating the granting of such security complies with certain requirements, as explained below. Security over working capital is rather unusual in Spain.	It is rare that creditors are granted new security within the insolvency proceedings, since these proceedings are aimed at protecting the debtor's assets and ensuring payment to all creditors to the maximum extent possible. Please note that the approval by the insolvency receivers would be required for any such new security. If the debtor's directors no longer manage the company (as a result of a creditor filing for insolvency or of the opening of the liquidation phase), it would be on the insolvency receiver to directly decide on any such granting of security. Security over working capital is rather unusual in Spain.	The relevant agreement may contemplate the granting of security. Please note that this granting of security will not normally be subject to clawback within later insolvency proceedings if the relevant agreement expressly contemplates it. Security over working capital is rather unusual in Spain.

SPAIN

	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
What is the nature of the process?	The process under the Spanish Insolvency Act (Article 5-*bis*) is used as an alternative to filing for insolvency in order to gain up to an extra four months to negotiate: (1) a debt restructuring agreement (which is aimed at avoiding filing for insolvency); (2) an out-of-court agreement (*acuerdo extrajudicial de pagos*, which is only available for certain companies); or (3) the agreement by certain majorities of creditors to an anticipated proposal for a composition agreement. The process consists of a formal notice (*comunicación)* to the competent court acknowledging the insolvency and making a reference to the existence of the negotiations for achieving any of the agreements or adhesions referred to above.	The court process leads to: (1) an order of the court for the liquidation and ultimate dissolution of the debtor (*liquidación)*; or (2) a composition agreement with the creditors (*convenio de acreedores*).	An out-of-court process is used to restructure a viable company's debt to avoid a formal insolvency process, provided that the assets and liabilities of the company do not exceed certain thresholds (EUR 5 million) and with fewer than 50 employees. This is achieved through the negotiation of a "payment plan" with creditors. The debtor must request the appointment of an insolvency mediator (*mediador concursal*) and be approved by the competent commercial registry or, in certain cases, a public notary. The mediator will summon the creditors to a meeting, in order to discuss the terms of an out-of-court agreement. In the event that a "5-*bis* notice" is filed for pre-insolvency proceedings and the debtor takes the time granted to negotiate an out-of-court agreement, the relevant provisions explained in the first column of this chart will apply.
What is the solvency requirement?	The debtor must currently or imminently be cash flow insolvent.	The debtor must currently or imminently be cash flow insolvent.	The debtor must currently or imminently be cash flow insolvent.
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes.	Yes.	Yes.
Is restructuring of both secured and unsecured claims possible?	Yes. Secured and unsecured debts may be written down or postponed under the agreement that may be ultimately entered into with the creditors.	**Composition agreement:** Yes. Secured and unsecured debts may be written down or postponed. **Liquidation:** Not a restructuring process. Creditors' claims (both secured and unsecured) are dealt with according to their ranking and value.	Yes. Secured and unsecured debts may be written down or postponed.

SPAIN	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
Is there a classification of creditors and shareholders?	N/A	Yes. Claims within the insolvency proceedings can be broken down into two major groups: claims against the estate (*créditos contra la masa*, which mainly refer to those claims originating after the start of the insolvency proceedings) and pre-bankruptcy claims (*créditos concursales*, which mainly refer to claims originating before the insolvency proceedings). This distinction is key, since, as a rule, only claims against the estate can be paid during the insolvency proceedings, to the extent that there is enough liquidity for their payment, and the payments against the estate, which have previously become due, have already been met. By contrast, and with the exception of secured claims under certain circumstances, pre-bankruptcy claims cannot be paid until a creditors' composition agreement has been approved by the court (and subject to the haircuts and stays contemplated under this agreement) or the liquidation has started. Pre-bankruptcy claims can be broken down as: (i) secured (*con privilegio especial*); (ii) preferential (*con privilegio general*); (iii) unsecured (*ordinarios*); and (iv) subordinated (*subordinados*). Please note that there is a further classification of claims for certain purposes, according to which they can be considered as: (i) employment-related claims; (ii) public claims (e.g., claims held by public entities such as tax authorities); (iii) financial claims; and (iv) any other type of debt, including that of a commercial nature.	N/A

SPAIN

	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
Is there a requirement for voting approvals by shareholders?	No shareholder vote is required for starting the process. Approvals by shareholder may, however, be necessary for certain actions included in the restructuring agreement.	No shareholder vote is required for starting the process, unless the insolvency is filed when the insolvency is merely imminent (and not current). Approvals by shareholder may, however, be necessary for certain actions included in the composition agreement.	No shareholder vote is required for starting the process.

SPAIN

	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
Is there a requirement for voting approvals by shareholders' creditors?	**Debt restructuring arrangement:** Certain voting approvals by creditors are required only for the restructuring agreement to be protected from clawback within later insolvency proceedings, in particular: (1) creditors representing at least 51% of total financial claims (e.g., lenders) with court approval ("homologation"); or (2) absent court approval, creditors representing at least 60% of total claims (financial and non-financial).	**Composition agreement:** A composition agreement will be considered to be approved by the creditors provided that: (1) creditors holding at least 50% of the total unsecured or "ordinary" claims (*créditos ordinarios*) vote in favor of the agreement, provided that it contemplates a debt write-off of up to 50% and/or a stay of up to five years; or (2) creditors holding at least 65% of the total unsecured claims vote in favor of the agreement, provided that it contemplates a stay longer than five years (up to 10) or any other legally admitted provision. If preferential treatment is given only to a creditor or group of creditors, the additional majority will be required, namely 50% or 65% of the non-privileged creditors, depending on whether the content of the agreement is of the type of those referred to in (1) or (2) above, respectively. In the event the above majorities are met, the composition agreement will be binding on dissenting secured creditors only if the following majorities are additionally met: (a) creditors holding at least 60% of the same type of secured claims vote in favor of the agreement, provided that it contemplates a debt write-off of up to 50% and/or a stay of up to five years; or (b) creditors holding at least 75% of the same type of secured claims vote in favor of the agreement, provided that it contemplates a stay longer than five years (up to 10) or any other legally admitted provision. **Liquidation**: N/A	An out-of-court agreement will be considered to be approved by the creditors provided that: (1) creditors holding at least 60% of the total claims that can be affected by the agreement vote in favor thereof, provided that it contemplates a debt write-off of up to 25% and/or a stay of up to five years; or (2) creditors holding at least 75% of the total claims that can be affected by the agreement vote in favor thereof, provided that it contemplates a debt write-off higher than 25% or a stay longer than five years (up to 10), or any other legally admitted provision. In the event the above majorities are met, a formal communication will be filed to the relevant court and the corresponding publications in public registries will take place. All non-secured creditors affected by the content of the agreement (other than those holding public claims) will be bound by its content. The agreement will also be binding on dissenting secured creditors only if the following majorities are additionally met: (a) creditors holding securities that represent at least 65% of the value of the total securities of the debtor, for any agreement of the type described in (1) above; or (b) creditors holding securities that represent at least 80% of the value of the total securities of the debtor, for any agreement of the type described in (2) above. If the majorities required for the approval of the agreement are not met, the mediator will file for insolvency. The relevant insolvency proceedings (*concurso consecutivo*) will have certain particularities.

SPAIN

	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
Is there an ability to bind minority/ dissenting creditors?	Yes. Regardless of whether or not a notice under Article 5-*bis* is filed, a restructuring agreement executed before any insolvency proceedings begin is binding on dissenting creditors if: (1) the required creditor majorities are obtained; and (2) provided that the relevant court "homologates" the agreement and dismisses any opposition that may be filed by the creditors. The majorities required in order to make the agreement binding on non-secured creditors are: (a) creditors representing at least 60% of financial claims, for any arrangement that provides for a stay of up to five years or the conversion of debt into equity loans with maturity of up to five years; or (b) creditors representing at least 75% of financial claims, for any arrangement that provides for a stay of five to 10 years; the conversion of debt into equity loans with maturity of five to 10 years, the conversion of debt into equity, or any other analogous financial instrument; or the dation in payment (i.e., transferring the relevant asset — usually granted as security — to the creditor in payment of its claim). The majorities required in order to make the agreement binding on secured creditors are: (i) creditors holding securities that represent at least 65% of the value of the total securities of the debtor, for any arrangement of the type described in (a) above; or (ii) creditors holding securities that represent at least 80% of the value of the total securities of the debtor, for any arrangement of the type described in (b) above.	**Composition agreements:** Yes. All unsecured and subordinated creditors will be bound by the agreement if it is approved by the court. Secured creditors will also be bound if the required majorities are met (we refer to our comments in the preceding section). **Liquidation:** N/A	Yes. Non-secured creditors affected by the content of the agreement (other than those holding public claims) will be bound if the necessary majorities approve it. Secured creditors will also be bound if the required majorities are met (we refer to our comments in the preceding section).

SPAIN

	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
COMMENCING THE PROCESS			
Who can commence?	1) Debtor	(1) Debtor; and (2) any creditor(s)	1) Debtor
Is shareholders' consent required to commence proceedings?	No. However, board authorization is required for filing the 5-*bis* notice with the court.	No, unless the filing for insolvency is made when the insolvency is merely imminent (not current). However, board authorization is required for any filing for insolvency both on an imminent or current insolvency basis.	No. However, board authorization is required.
Is there an ability to consolidate group estates?	N/A	No. Insolvency proceedings of group companies can be handled jointly by the same court (and the same insolvency receivers) but the estates and liabilities are not consolidated (with the rare exception of those cases where the assets are totally commingled with no possibility to allocate them to a certain group company).	N/A
Is there any court involvement?	Limited court involvement. A commercial court "accepts" or acknowledges the filing of the notice. There is no further intervention by the court, it does not supervise the negotiations by the debtor and its creditors. There is no obligation to inform the court on whether or not an agreement has been reached with the creditors.	Heightened court involvement. The process is supervised by the commercial court (specializing in bankruptcies), which decides on a variety of matters within the proceedings (criminal issues excluded).	Limited court involvement in the event that the negotiations have been communicated to the competent court under a 5-*bis* notice.
Who manages the debtor?	Debtor management retains its powers. No receivers are appointed.	The commercial court appoints insolvency receiver(s) that will supervise and control the process; the court's approval will be required for any payments or significant actions and decisions. However, the debtor's directors retain their powers unless the court orders their substitution by the insolvency receiver. This replacement generally takes place when a creditor has made the filing for insolvency. In addition, directors will, in any case, step down once the liquidation phase starts (as the insolvency receiver will then assume all liquidation functions).	Debtor management retains its powers. If the agreement is approved, the mediator will supervise that it is duly complied with by the debtor.

SPAIN

	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
What is the level of disclosure of the process to voting creditors?	The filing of the 5-*bis* notice may be kept confidential, if so requested by the debtor, thus the creditors that are not directly contacted by the debtor may not be aware of the negotiations.	The debtor makes a preliminary disclosure upon filing for insolvency. The court's formal declaration of insolvency is published in the Official Gazette (*Boletín Oficial del Estado*). All creditors that have formally appeared within the proceedings will receive notice of all submissions made and all court decisions taken within the proceedings. In addition, appearing creditors will get a copy of the report drafted by the insolvency receiver with certain details on the debtor's history, its accounting and the reasons for the insolvency, as well as certain considerations on the proceedings. Creditors entitled to vote for a composition agreement (*convenio de acreedores*) will have access to the proposal filed by the debtor and the payment schedule and viability plan attached thereto.	The mediator shall summon all creditors listed by the debtor or who appear in other documents available to the mediator to a meeting.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	N/A	The Insolvency Act applies to all types of debtors. In any case, there are certain types of debtors, such as financial entities, insurance companies or investment services companies, which are subject to their specific legislation (this is listed in the Second Additional Provision — *Disposición Adicional Segunda* — of the Insolvency Act). For instance, financial entities are also subject to the insolvency law provisions included in, among others, Act 41/1999 (dated 12 November 1999), Act 6/2005 (dated 22 April 2005), or Act 11/2015 (dated 18 June 2015).	N/A

SPAIN	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
How long does it generally take for a creditor to commence liquidation of an insolvent company?	N/A	The liquidation phase can start at any time within the proceedings, even upon the court's declaration of the debtor's insolvency, if so requested by the debtor. The debtor is free to ask for the opening of the liquidation phase at any time during the proceedings, with no need to justify its request. Liquidation would also automatically start in those cases where no proposal for a composition agreement has been filed or the one filed has not been approved by the creditors or ultimately the court. In addition, liquidation will start if the approved composition agreement is later breached by the debtor.	N/A
EFFECT OF PROCESS			
Does the debtor remain in possession with the continuation of incumbent management control?	Yes.	**Voluntary proceedings** (*concurso voluntario,* i.e., the debtor filed for insolvency): Yes. The debtor's management retain their powers, which are exercised under the supervision of the insolvency receiver. Once the liquidation phase starts, the insolvency receiver will replace the directors. **Involuntary (or mandatory) proceedings** (*concurso necesario* i.e., the creditor filed for insolvency): No. The debtor's management is replaced by court-appointed receivers. In voluntary and involuntary proceedings, court authorization may be necessary for certain sales of assets or transactions outside the ordinary course of business.	Yes, subject to certain restrictions. In particular, directors will refrain from carrying out any transaction that cannot be considered ordinary for the relevant type of business. If the agreement is approved, the mediator will supervise that it is duly complied with by the debtor.

SPAIN

	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
What is the stay/moratorium regime (if any)?	Filing the 5-*bis* notice prevents the start or continuation of (i) enforcement proceedings relating to assets required in the ordinary course of the business; and (ii) any enforcement proceedings relating to financial claims, provided that the creditors holding at least 51% of the total financial claims have agreed to negotiate a restructuring agreement and not to take any enforcement action. It also prevents the continuation of any foreclosure proceedings relating to assets necessary for the business. The assessment on whether or not an asset is necessary for the business is carried out by the court before which the 5-*bis* notice is filed.	After the commencement of insolvency proceedings, no enforcement proceedings can be started against the debtor's assets and those previously started will be stayed. Only certain enforcements relating to some public and labor claims can continue, provided that the relevant attached assets are not necessary for the debtor's business. Secured creditors are entitled to start or continue the relevant foreclosure proceedings: (1) at any time during insolvency proceedings, provided that the relevant security is not necessary for the debtor's business or activity; (2) only after one year following the declaration of insolvency; or, if earlier, once a composition agreement has been approved by the court (and does not prevent the enforcement of the security) or once the liquidation phase has started.	In the event a 5-*bis* notice is filed, the same stays referred to in the first column will apply.
Is there a provision for debtor-in-possession super-priority financing?	Yes. **Priority:** 50% super-priority (i.e., the claims would be against the estate) for "new money" provided under a restructuring agreement of the type of those protected from clawback. The remaining 50% would be granted preferential treatment among pre-bankruptcy claims (*crédito con privilegio general*). Any new money provided after the insolvency proceedings formally start would be granted super-priority.	Yes. **Priority:** 50% super-priority (i.e., the claims would be against the estate) for "new money" provided under a restructuring agreement of the type of those protected from clawback. The remaining 50% would be granted preferential treatment among pre-bankruptcy claims (*crédito con privilegio general*). Any new money provided after the insolvency proceedings formally start would be granted super-priority.	N/A
Is there a debt-to-equity swap?	Yes. Restructuring plans may contemplate debt-to-equity swaps.	**Composition Agreement:** Yes, in accordance with the terms of this agreement. **Liquidation:** N/A	Yes, in accordance with the terms of the agreement.

SPAIN

	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
Are third-party releases available?	Yes, the debtor's management can release third parties in accordance with the terms of the restructuring plan.	Where the debtor's management keeps its powers, the debtor may release third parties from obligations with the consent of the insolvency receiver. Where the insolvency receiver has replaced the directors, they will directly adopt the relevant decision. In certain cases, court authorization may also be required.	Yes, the debtor's management can release third parties in accordance with the terms of the agreement.
Are the proceedings recognized abroad?	Yes, in accordance with the European Insolvency Regulation (EIR), the domestically adopted version of UNCITRAL or other applicable conflict of laws principles and/or treaties for other countries.		
Has the UNCITRAL Model Law been adopted?	Not recognized as the "main" proceedings under UNCITRAL as it is an out-of-court process.	Yes.	Not recognized as the "main" proceedings under UNCITRAL as it is an out-of-court process.
How long, complex and expensive is the process?	**Estimated timing:** Three months after filing (if no restructuring agreement is reached, filing for insolvency will take place in the following (fourth) month). **Costs:** Less expensive as it does not involve the commercial court or insolvency receivers.	**Estimated timing:** The timing of the process varies. On average, insolvency proceedings last a minimum of two years. In some cases, it may take several years, especially if the liquidation phase is opened. **Costs:** Expensive as it involves receiver's fees and, in some cases, court fees. Such fees are granted super-priority (i.e., they are classified as claims against the estate).	**Estimated timing:** If a 5-*bis* notice is filed, the agreement will be reached within three months of the notice; otherwise, the mediator will file for insolvency in the following (fourth) month. **Costs:** Less expensive as it does not involve the commercial court.
Is there a mandatory set-off of mutual debts on insolvency?	No.	No. Set-off can be applied only if certain requirements are met (in particular, both debts will have become due and payable before the start of the proceedings).	No.
In what circumstances can a debtor continue to carry on business during insolvency proceedings?	Filing the 5-*bis* notice does not affect continuity of business by the debtor.	The Insolvency Act actually aims at the continuity of the debtor's business, not only in a composition agreement scenario, but also in the case of liquidation. In particular, it encourages the sale of the whole business or business units of the debtor, in order to transfer such business as a whole, to the extent possible.	This process does not affect the continuity of business by the debtor.

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	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
OTHER FACTORS			
Are there any wrongful or insolvent trading restrictions, and what is the directors' liability?	Yes. Wrongful and/or insolvent trading restrictions apply. **Who can be liable:** Directors. **Requirements:** Debtor must be insolvent (either currently or imminently). **Liability:** Late filing of the notice (it will be filed within two months from the date on which the debtor cannot regularly meet its due and payable obligations) or late filing for insolvency, if negotiations for a restructuring agreement fail.	Yes. Wrongful and/or insolvent trading restrictions apply. **Who can be liable:** Directors, de facto directors and "shadow" directors, including those who held these positions in the two years prior to the declaration of insolvency. **Requirements:** Insolvency will be fraudulent when it was caused or worsened as a result of the directors' malicious intent or serious negligence. Some legal presumptions may apply (some of which cannot be rebutted). **Effect of liability:** Disqualification from being a director from two to 15 years; loss of any rights against the debtor as creditor; and order to compensate any damages caused. In case of liquidation, the court can also declare the relevant directors personally liable for all or part of the debtor's outstanding debts.	Yes, in the event the agreement is not reached and the debtor (or the relevant mediator) files for insolvency. Directors' liability provisions apply.

SPAIN	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
What is the order of priority of claims?	N/A	In a liquidation scenario, the order of distribution is as follows: **Claims against the debtor's estate** (*créditos contra la masa*): Employment claims corresponding to the 30 days preceding the start of the insolvency proceedings, up to a cap, 50% of claims corresponding to fresh money injected as per certain restructuring agreements, and claims arising after the declaration of insolvency relating to the insolvency proceedings or the continuation of the business. **Secured claims** (*créditos con privilegio especial*): Are paid with the proceeds obtained through the sale of the relevant security. **Privileged claims** (*créditos con privilegio general*): Including employee and public claims up to certain caps and percentages, claims corresponding to fresh money injected as per certain restructuring agreements that have not been classified as claims against the estate, or 50% of the claims held by the creditor that filed for insolvency, if applicable. **Unsecured or ordinary claims** (*créditos ordinarios*) **Subordinated claims** (*créditos subordinados*): Claims held by directors or shareholders holding over 5% for listed companies, or 10% for non-listed companies, of the share capital, intra-group loans, fines, interest and claims not reported in time that are not reflected in the debtor's accounting or documents.	N/A
Are there any pension liabilities?	N/A	Pension liabilities rank above ordinary unsecured claims in any distribution, up to certain caps.	N/A

SPAIN

	Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)
Is it possible to challenge prior transactions?	N/A	**Relevant period:** Two years prior to declaration of insolvency. **Requirements:** Transactions may be clawed back or rescinded if (a) detrimental to the debtor's assets; or (b) they breach *pari passu* rules (i.e., the principle according to which all unsecured creditors will be treated equally, which is subject to a case-by-case court analysis). There are certain presumptions on the existence of detriment to the debtor's assets, some of which are not subject to rebuttal.	N/A

COVID-19

Is state support for distressed businesses available?

Yes, certain urgent financial measures have been implemented by the Spanish government so as to support the affected businesses, particularly in the tourism sector and in respect of Small and Medium-sized Enterprises ("**SMEs**") and to guarantee the liquidity and stability of companies.

These measures, as contemplated by Royal Decree Law 7/2020, of 12 March, which adopts urgent measures to respond to the economic impact of Covid-19 ("**Royal Decree Law 7/2020**"), are:

- A credit line from the Institutional Credit Institute ("ICO") for an amount of EUR 400 million to meet the liquidity needs of companies and self-employed workers in the tourism sector, as well as related activities that are being affected by the current situation.

This credit line reinforces and extends the credit line initially planned for those affected by the insolvency of the Thomas Cook business group, also to those affected by the crisis triggered by Covid-19, so that it is made available to all companies and the self-employed with registered office in Spain that are included in the touristic and related sectors.

- The right of SMEs that received loans from the General Secretariat for Industry and Small and Medium-sized Enterprises (Secretaría General de Industria y de la Pequeña y Mediana Empresa) to defer repayment of principal and/or interest on the current annual installment, provided that the due date falls within less than 6 months from the entry into force of Royal Decree Law 7/2020, and provided that the health crisis caused by Covid-19 has led to periods of inactivity, reduction in the volume of sales or supply disruptions in the value chain that would render it difficult or impossible to meet such payment.

Furthermore, Royal Decree Law 8/2020, of 17 March, on extraordinary measures to face the economic and social impact derived from Covid-19 ("**Royal Decree Law 8/2020**") contemplates the following additional measures:

- The approval of a credit line backed by the Spanish State to guarantee liquidity of companies and the self-employed ("**Line of Guarantees**") (as amended by Royal Decree Law 15/2020, of 21 April, on additional urgent measures to support the economy and employment in response to the Covid-19 health crisis ("**Royal Decree Law 15/2020**")).

SPAIN

Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)

Insolvency proceedings (Concurso de acreedores)

Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)

This Line of Guarantees consists in the granting of guarantees by the Ministry of Economy and Digital Transformation to back financing to be granted by credit institutions, financial credit establishments, electronic money institutions and payment institutions to companies and the self-employed to meet their needs arising, among others, from managing invoices, revolving capital requirements, maturities of financial or tax obligations or other liquidity needs. Pursuant to Royal Decree Law 15/2020, this Line of Guarantees can also be destined to the Spanish Refinancing Company CERSA and the promissory notes incorporated into the Bond Market of the Association of Financial Assets Intermediaries (AIAF) and the Alternative Bond Market (MARF).

The Line of Guarantees, which will amount up to a maximum of EUR 100 billion (divided into four tranches to be consecutively approved), can be used until 31 December 2020.

(i) The first tranche has been approved on 24 March 2020 for a maximum amount of EUR 20 billion, which shall apply to companies and self-employed (with corporate address in Spain) affected by the economic effects of Covid-19, provided that they were not in default on 31 December 2019 nor under insolvency proceedings as of 17 March 2020 and that they are not "in difficulty" pursuant to section 18 of article 2 of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty ("**Regulation 651/2014**").

The Line of Guarantees may cover both new loans and renewals of existing loans, provided that they are requested before 30 September 2020 and in relation to loans executed or renewed after 17 March 2020; and will amount up to (i) 80% of new loans and renewals requested by SMEs and self-employed, and (ii) 70% of new loans and 60% of renewals requested by companies (i.e., other than SMEs and self-employed).

The term of the loan guarantee shall match the term of the relevant guaranteed loan, up to a maximum of 5 years. There is a maximum loan amount per client depending on whether the loan exceeds the amount of EUR 1.5 million or not. In summary, for loans up to EUR 1.5 million, the maximum amount of the guaranteed loan/refinancing operation by client is EUR 1.5 million; and for loans above EUR 1.5 million, up to the maximum provided for in the European Commission's Temporary Framework for State Aid for both the self-employed and companies. The application for the financing shall be made directly before the relevant financial entity, which will decide on the granting of the relevant financing to the client in accordance with its internal procedures and granting and risks' policies. In particular, and unless other conditions are imposed by the ICO to each entity, the particular conditions (including interest rates) applicable to the loans will in principle be determined at the discretion of each financial entity taking into account each client's solvency and risks. The financial cost of the guarantees will be between 20 and 120 basic points, which will be assumed by the relevant financial entity.

(ii) The second tranche has been approved on 10 April 2020 for a maximum amount of EUR 20 billion, which shall apply only to SMEs and self-employed (with corporate address in Spain) affected by the economic effects of Covid-19, provided that they were not in default on 31 December 2019 nor under insolvency proceedings as of 17 March 2020 and that they are not "in difficulty" pursuant to section 18 of article 2 of the Regulation 651/2014.

The terms and conditions set out in the agreement of the Council of Ministers dated 24 March 2020 in relation to the approval of the first tranche of ICO credit lines are also applicable to this second tranche, to which certain specific provisions included in the agreement of 10 April 2020 also apply, in particular, but not limited to: (i) the eligible new loans and renewals are granted by credit institutions, financial credit establishments, electronic money institutions and payment institutions to SMEs and self-employed workers, provided that such financial entities have adhered to the ICO master agreement by 15 May 2020; (ii) the costs of new loans and renewals that benefit from these guarantees shall be in line with the costs applied before the commencement of the Covid-19 crisis and therefore, in general, they shall be lower than the costs of loans and other operations for the same type of client which are not covered by the guarantee; and (iii) under no circumstances the financial entities are entitled to make the granting of a guaranteed loan conditional on the customer taking out other products.

(iii) The third tranche has been approved on 5 May 2020, which contemplates the following:

(a) EUR 20 billion will be destined to guarantee new loans and renewals of existing loans granted to companies and self-employed (with corporate address in Spain) affected by the economic effects of Covid-19, provided that they were not in default on 31 December 2019 nor under insolvency proceedings as of 17 March 2020 and that they are not "in difficulty" pursuant to section 18 of article 2 of the Regulation 651/2014.

The terms and conditions set out in the agreements of the Council of Ministers dated 24 March 2020 and 10 April 2020 in relation to the approval of the first and second tranche of ICO credit lines are also applicable to this third tranche, to which certain specific provisions included in the agreement of 5 May 2020 also apply, in particular, but not limited to: (i) the financial entities are not entitled to charge any financial cost or expense on any of the amounts undrawn by the client; and (ii) the financial entities must comply with all requirements set out in the agreements of the Council of Ministers and in the Master Agreement entered into with ICO, without prejudice that its material breach is considered a disciplinary offense.

(b) EUR 4 billion will be destined to guarantee the issuance of promissory notes by non-financial companies (with corporate address in Spain) which, prior to the entry into force of Royal Decree Law 15/2020, have promissory note programmes in force and incorporated into MARF, provided that they are not "in difficulty" pursuant to section 18 of article 2 of the Regulation 651/2014 and that the promissory notes are issued in accordance with a promissory note program incorporated into MARF prior to 30 September 2020.

This financing shall also be applied by the relevant non-financial companies to meet their needs arising, among others, from managing invoices, revolving capital requirements, maturities of financial or tax obligations or other liquidity needs.

The guarantee will cover a maximum of 70% of the amount of each issuance. The term of the guarantee issued shall match the term of the relevant guaranteed promissory note, up to a maximum of 2 years. The financial cost of the guarantees will be: (i) 30 basic points per annum for promissory notes with a maturity of up to 1 year and (ii) 60 basic points per annum for promissory notes with a maturity of more than 1 year and up to 2 years.

(c) EUR 500 million will be destined to reinforce the guarantees granted by CERSA for purposes of counter-guaranteeing or partially covering the risk assumed by Mutual Guarantee Companies (Sociedades de Garantía Recíproca) for SMEs, which shall also apply this financing to meet their needs arising, among others, from managing invoices, revolving capital requirements, maturities of financial or tax obligations or other liquidity needs.

The maximum guarantee will be 80%, although it may vary in each transaction to complement the guarantee granted by the European Investment Fund to CERSA, without both guarantees exceeding 90% of coverage. The term of the guarantee issued shall match the term of the relevant re guarantee approved by CERSA, up to a maximum of 5 years. The guarantees can be requested since 1 April 2020 and until 30 September 2020.

- The increase of the ICO's net debt limit by EUR 10 billion to finance companies, particularly SMEs and the self-employed, which will be carried out through ICO's lines of financing through intermediation of financial institutions in the short, medium and long term, in accordance with its policy of direct financing for larger companies.
- The creation of a line of insurance coverage of up to EUR 2 billion from the Risk Reserve Fund for Internationalisation, in order to provide additional liquidity to companies, especially SMEs and self-employed workers.

  This line will last six months from the entry into force of Royal Decree Law 8/2020, to cover revolving loans to Spanish exporters considered as SMEs, as well as other non-listed companies, provided that they operate internationally or are in the process of becoming international and face a liquidity problem or lack of access to finance as a result of the impact of the Covid-19 crisis on their economic activity. Coverage will be provided by Compañía Española de Seguros de Crédito a la Exportación S.A. Cía. de Seguros y Reaseguros ("CESCE"), S.M.E. in its own name and on behalf of the Spanish State.
- Financial support measures for SME digitalisation.

  The State will financially support, through ICO financing for SMEs, the purchase and leasing of equipment and services for the digitalization of SMEs and telework solutions, mobilizing in the next two years more than EUR 200 million.

Likewise, Royal Decree Law 11/2020, of 31 March, adopting additional urgent measures in the areas of employment and economics to deal with the Covid-19 crisis ("**Royal Decree Law 11/2020**") contemplates additional financial support measures, which are summarised below:

- Refinancing of loans granted by the General Secretariat for Industry and Small and Medium-sized Enterprises (Secretaría General de Industria y de la Pequeña y Mediana Empresa) for a period of two and a half years (extendable by resolution of the Council of Ministers) as from the date Royal Decree 463/2020 of 14 March entered into force, provided that the health crisis caused by the Covid-19 has led to periods of business inactivity for the beneficiary; reduction of its sales; or supply interruptions in the value chain.

  Changes to the repayment schedule may consist of: a) increasing the maximum repayment term; b) increasing the maximum grace period, if any principal has not yet fallen due; or c) other amendments, provided that they respect the same maximum levels of aid and risk that existed at the time the loans were granted.

- The increase by EUR 60 million of the Covid-19 guarantee line pertaining to CERSA's Technical Provisions Fund (CERSA is the Spanish Refinancing Company) in order to provide for extraordinary credit risk coverage for the financing of operations of SMEs which are affected by the Covid-19 crisis.

  Accordingly, CERSA will be able to assume approximately EUR 1 billion of risk, which will allow the mobilization of EUR 2 billion for the benefit of 20,000 SMEs and self-employed workers.

- The suspension, for a one-year period and without the need for prior application in relation thereto, of the repayment of capital and interest arising from loans that were granted by the Secretariat of State for Tourism (within the framework of the Emprendetur R+D+i Program, the Emprendetur Young Entrepreneurs Program and the Emprendetur Internationalization Program).

  These payments are due on the same date of the following year in which the loan was granted, without this implying the accrual of additional interest.

- The right of companies and self-employed workers who are borrowers of loans granted by an Autonomous Community or Local Institution/Township to defer repayment of the principal and/or interest due, for the remainder of 2020, provided that the health crisis caused by the Covid-19 or the measures adopted to mitigate it have led to periods of business inactivity, significant reductions in the volume of sales, or supply interruptions in the value chain, which make it difficult or impossible for them to meet the payment obligations related thereto.

Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?

Deferral of payments/payment moratoriums:

In addition to the deferral/suspension of payments provided in relation to the loans granted by the General Secretariat for Industry and Small and Medium-sized Enterprises (Secretaría General de Industria y de la Pequeña y Mediana Empresa), the Secretariat of State for Tourism and/or an Autonomous Community or Local Institution/Township, as indicated in question above, the following payment moratoriums have been implemented in Spain:

- Moratorium on non-mortgage loans (including consumer credits).

  This moratorium is applicable to natural persons/individuals, either employed or self-employed, provided that they are under an "economic vulnerability situation" (as this term is defined under the Covid-19 related Spanish regulation) due to Covid-19 outbreak.

  During the moratorium period (i.e., 3 months from the debtor's request for suspension to the creditor, accompanied by the required documentation so that the "economic vulnerability situation" of the debtor is accredited), extendable if the Council of Ministers agrees to do so), the creditor shall not be entitled to demand payment of principal and/or interest, either in full or in part, and neither ordinary interest nor default interest will be accrued during such period.

- Moratorium on mortgage loans for the acquisition of

  (i) main residence;

  (ii) property intended for the economic activity/business of entrepreneurs and professionals (i.e. individuals who meet the conditions set out in article 5 of the VAT Act); or

  (iii) dwellings (other than the main residence) that are rented out and in respect of which the mortgagor (the natural person who is the owner and lessor of said dwellings) has ceased to receive the rental income due to the entry into force of the state of emergency or has ceased to receive it in a period of up to one month after the state of emergency ends.

  This moratorium is applicable to natural persons/individuals, either employed or self-employed, provided that they are under an "economic vulnerability situation" (as this term is defined under the Covid-19 related Spanish regulation) due to Covid-19 outbreak.

  During the moratorium period (i.e., 3 months since the creditor grants such suspension, which shall be granted within a maximum period of 15 days from the debtor's request for suspension, accompanied by the required documentation so that the "economic vulnerability situation" of the debtor is accredited), extendable if the Council of Ministers agrees to do so), the creditor shall not be entitled to demand payment of principal and/or interest under the loan or to accelerate or enforce the loan. Likewise, the debt shall not accrue either ordinary interest or default interest during such period.

- Moratorium on rental debt under lease agreements for main residence (with different alternatives depending on the landlord characteristics (i.e., in case it is a major landlord or a small landlord)).

  This moratorium is applicable to natural persons/individuals, either employed or self-employed, provided that they are under an "economic vulnerability situation" (as this term is defined under the Covid-19 related Spanish regulation) due to Covid-19 outbreak.

  In relation to these lease agreements for main residence, please note that it has also been provided an extraordinary extension thereof for a maximum period of 6 months.

- Moratorium on rental debt under lease agreements for commercial premises (with different alternatives depending on the landlord characteristics (i.e., in case it is a major landlord or a small landlord)).

  This moratorium is applicable to the self-employed and SMEs whose commercial activity, among other requirements, has been suspended or significantly reduced due to the current state of emergency.

Filing for insolvency:

Until 31 December 2020, debtors who are in a state of insolvency will not be obliged to apply for a declaration of insolvency and until such date the judges will not admit the filings for involuntary insolvency (concurso necesario) that may have been submitted by creditors. In particular, the debtor's filing for insolvency would have preference over any filing made by creditors before such date, even if the debtor's submission took place afterwards.

Insolvent debtors may submit proposals to amend composition agreements reached with the creditors and approved by the court (convenios de acreedores) until 14 March 2021. Also until this date, debtors who entered into a restructuring agreement that was homologated by the competent court may amend such agreement, thus avoiding the obligation to file for insolvency.

SPAIN

Pre-insolvency proceedings (Preconcurso o comunicación del 5-bis)	Insolvency proceedings (Concurso de acreedores)	Insolvency mediation (Mediación Concursal o Expediente de Acuerdo Extrajudicial de Pagos)

Contractual default:

In case of default by any of the parties to a contract, the defaulting party may argue that the relevant breach has taken place as a result of the Covid-19 situation and invoke force-majeure or rebus sic stantibus grounds in order to consider that no such breach exists. Court decisions will be taken on a case-by-case basis.

Is further reform of the insolvency regime being discussed/anticipated? If so, give details.

There is no actual project to amend the Insolvency Act as a result of the Covid-19 situation.

However, a Recast Text of the Insolvency Act (Texto Refundido de la Ley Concursal) has been approved on 5 May 2020 and will enter into force on 1 September 2020. It does not significantly change the insolvency regime but introduces certain amendments and clarifications to provisions that had been subject to discussion.

SWEDEN

SWEDEN

	Bankruptcy process	Company reorganization process
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	In principle, security can be taken over all types of assets. Security over immovable real estate and over ships and aircraft is created by way of a mortgage. This security is perfected by the possession of a mortgage deed and registration in public registers. Security can also be created over practically all moveable assets either in the form of a pledge over specific property or a floating charge over the assets in a business (a floating charge will not include cash and shares).	In principle, security can be taken over all types of assets. Security over immovable real estate and over ships and aircraft is created by way of a mortgage. This security is perfected by the possession of a mortgage deed and registration in public registers. Security can also be created over practically all moveable assets either in the form of a pledge over specific property or a floating charge over the assets in a business (a floating charge will not include cash and shares).
What is the nature of the process?	Court process leading to: (1) the distribution of the debtor's assets, ending in the dissolution of the company; (2) if there is a surplus of assets after the bankruptcy, the liquidation of the company. The bankruptcy can be ended through distribution; an agreement between the debtor and the creditors according to which they reach a settlement; or the writing-off of the bankruptcy.	Court proceedings where the assigned restructurer is to examine if it is possible during a period of three months and up to a maximum of one year to absolve the debts within the company. This includes an abatement of debts/creditors. At the end of the restructuring process the debtor is either viable to continue its business operations or needs to commence bankruptcy proceedings instead.
What is the solvency requirement?	The debtor must be proven to be insolvent. A debtor is considered to be insolvent if it cannot pay its debts when due and this incapacity is not merely temporary.	Two conditions must be fulfilled to obtain an order for a company reorganization. First, the debtor must be deemed to be unable to make payment of its debts as they become due or it is likely that such inability will exist within a short time. In other words, there must be a lack of liquidity or a risk of future lack of liquidity. Second, there must be reasonable cause to assume that the purpose of a company reorganization can be achieved. In this regard, the court does not carry out any detailed assessment, rather, the aim is to prevent abuse where the conditions for a successful company reorganization do not exist. The assessment is thus of a more general and formal nature.

SWEDEN

	Bankruptcy process	Company reorganization process
Is there a requirement to demonstrate centre of main interests (COMI)?	Yes.	Yes.
Is restructuring of both secured and unsecured claims possible?	Yes.	Yes.
Is there a classification of creditors and shareholders?	Yes. Creditors have either priority claims or non-priority claims. Generally, a specific right of priority has precedence over a general right of priority and all priority claims have priority over non-priority claims, i.e., non-priority claims will not be paid at all until the priority claims have been settled.	Not generally. However, if the reorganization process transcends into bankruptcy proceedings the claims during the restructuring might be relevant in the bankruptcy proceedings.
Is there a requirement for voting approvals by shareholders?	No.	No.
Is there a requirement for voting approvals by shareholders' creditors?	No.	No.
Is there an ability to bind minority dissenting creditors?	N/A	N/A
COMMENCING THE PROCESS		
Who can commence?	Bankruptcy proceedings may be initiated on the debtor's own application or on the application of a creditor.	Reorganization proceedings may be initiated on the debtor's own application or on the application of a creditor.
Is shareholders' consent required to commence proceedings?	No.	No.
Is there an ability to consolidate group estates?	No. However, the same administrator will often be appointed for all group entities involved, for the purpose of coordination and efficiency.	No. However, the same administrator will often be appointed for all group entities involved, for the purpose of coordination and efficiency.

SWEDEN

	Bankruptcy process	Company reorganization process
Is there any court involvement?	Proceedings are supervised by the court, which will include, among other things: determining the petition; determining insolvency; appointing an administrator and summon debtor, administrator, supervisory authority (the Enforcement Authority, Kronofogdemyndigheten) and creditor that presented the bankruptcy petition to the meeting for the administration of oaths.	Proceedings are supervised by the court, which will include, among other things: determining the petition; determining the ability for the debtor to pay its debts; appointing an administrator; and seting a time for a creditor's meeting.
Who manages the debtor?	The assets of the bankruptcy estate are taken into the possession of an administrator on behalf of the creditors, which will assume full and sole control over the business.	The debtor keeps its right to dispose of its assets during the company reorganization. The debtor has to observe the administrator's instructions regarding the operations of the business and provide the administrator with information regarding its financial position.
What is the level of disclosure of the process to voting creditors?	N/A	N/A
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	In principle, bankruptcy proceedings may be commenced by or against any natural person or legal entity. However, bankruptcy proceedings cannot be commenced against (1) the Swedish State, or (2) municipalities.	The Swedish Reorganization Act (SFS 1996:764) (Lag om företagsrekonstruktion) is not applied to: (1) bank shares companies; (2) savings banks; (3) member banks; (4) credit market companies; (5) insurance companies; (6) securities companies; (7) clearing organizations; and (8) securities centers. The provisions do not apply to such debtors in whose activities the municipality, county council, municipal council, assembly or church community has a controlling influence. The provisions of this law concerning debtors will apply to a financial institution or holding company that is included in a resolution in accordance with the Swedish Resolution Act (SFS 2015:1016) (Lag om resolution).

SWEDEN

	Bankruptcy process	Company reorganization process
How long does it generally take a creditor to commence the procedure?	A creditor can apply for the bankruptcy procedure. If a creditor makes the petition, in the petition the creditor should then provide information about its claim and the circumstances upon which it bases the claim. The creditor should also enclose the original or copies of those documents to which it wishes to refer. The court will make an evaluation of the debtor's financial position in order to decide if the debtor is insolvent. In the event that a debtor's bankruptcy petition is lodged, the court will immediately determine the petition. However, under some circumstances, the bankruptcy application of the debtor is determined at a hearing, e.g., if there are special reasons not to accept the information regarding the insolvency of the debtor. If the debtor disputes a creditor's bankruptcy petition, the court lists a hearing for determination of the petition, to be held within two weeks of the petition being submitted to the court. If prior to the hearing the debtor consents to the bankruptcy petition of a creditor, the court will immediately consider the petition. When a decision on bankruptcy is made, the district court will decide on the date for a meeting at which the debtor confirms the estate inventory under oath (a "meeting for the administration of oaths"). This meeting will held, at the earliest, within one month of the bankruptcy decision and, at the latest, two months after the decision. The court will also appoint an administrator, a specialist lawyer, and summon the debtor, administrator, supervisory authority and creditor that presented the bankruptcy petition to the meeting for the administration of oaths. Furthermore, a public notice of the bankruptcy decision — through which other creditors are summoned to the meeting for the administration of oaths — is published immediately.	The general rule is that an application filed by the debtor will be tried immediately. An application filed by a creditor will be tried within two weeks and no later than after six weeks from the date when the application was made. When an application filed by a creditor is tried, special procedures involving meeting sessions with both creditor and debtor are applied.

SWEDEN

	Bankruptcy process	Company reorganization process
EFFECT OF PROCESS		
Does the debtor remain in possession with the continuation of incumbent management control?	No. An administrator runs bankruptcy proceedings. The assets of the bankruptcy estate are taken into the possession of the administrator on behalf of the creditors, which will assume full and sole control over the business.	During the company reorganization, the debtor keeps its right to dispose of its assets. Nevertheless, the debtor has to observe the administrator's instructions regarding the operations of the business and provide the administrator with information regarding its financial position. If the debtor does not observe the administrator's instructions, the administrator, or a creditor, may apply to the court that the company's reorganization procedure shall be discontinued. The debtor may not, without the administrator's consent, (i) pay any debts that occurred after the District Court's decision to approve the company reorganisation, (ii) enter into new obligations, or (iii) assign, pledge or grant any other right of significant importance to the debtor's business. However, it should be noted that the lack of the administrator's approval for such actions does not affect the legal validity of the actions and they are hence binding between the parties and, if applicable, against third parties.
What is the stay/moratorium regime (if any)?	There is no specific stay regime in bankruptcy proceedings, but if there are special reasons for it, then the commencement of the bankruptcy proceedings may be suspended for up to four weeks (longer if necessary). Moreover, once bankruptcy proceedings are opened, no creditors may enforce their claims against the debtor. The only exception to this would be a creditor with security in the form of a pledge over specific property, which may be enforced even during bankruptcy proceedings as long as realization is coordinated with and accounted for to the bankruptcy receiver.	With the decision to initiate a corporate reorganization procedure, the debtor with payment difficulties gets a stay to take action to improve the performance of the business and initiate negotiations with the creditors for an agreement. Without reasonable room, a reorganization of the business would not be possible. During the reorganization, the debtor is protected against specific actions of the creditors. This is motivated by common creditor interest and that an individual creditor should not be able to jeopardize the possibilities for a successful reorganization. The main rule during the procedure is that debts arising before the start of the reorganization are not paid. According to the Swedish Enforcement Code (1981:774) (Utsökningsbalk) execution measures must not be performed and an application for the debtor company to be placed in bankruptcy must not be approved, but must be rescinded at the debtor's request, in order to give the reorganization a chance. The debtor company's contractual counterparties may not, after a decision on the company's reorganization, cancel agreements on the grounds of occurrence or fearful delay, even though the cancellation grounds have arisen before the decision. However, the prohibition on the cancellation of the agreement exists only if the debtor, with the consent of the reformer, requests that it be completed and provides security for the debtor's performance or fulfills the same.

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	Bankruptcy process	Company reorganization process
Is there a provision for debtor-in-possession super-priority financing?	The administrator can choose to take up new debt, which will have specific priority. This is primarily relevant in situations where the administrator has chosen to continue the business operations of the bankrupt debtor.	During a company reorganization the company can, if approved by the administrator, take up new debt.
Can the procedure be used to implement a debt-to-equity swap?	No.	No.
Are third-party releases available?	Yes.	Yes.
Are the proceedings recognized abroad?	Yes. Within the EU according to the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Insolvency Regulation). Swedish law recognizes insolvency procedures initiated in other jurisdictions based on, and in accordance with, the Insolvency Regulation and the Nordic Bankruptcy Convention.	Yes. Within the EU according to the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Insolvency Regulation). Swedish law recognizes insolvency procedures initiated in other jurisdictions based on, and in accordance with, the Insolvency Regulation and the Nordic Bankruptcy Convention.
Has the UNCITRAL Model Law been adopted?	No.	No.
How long, complex and expensive is the process?	Estimated timing: At least six to 12 months, but often continues for more than a year. Costs: Expensive as it involves court fees, insolvency administrator fees and other legal fees. The cost will depend on the size and complexity of the debtor and claims.	Estimated timing: It is assumed that the formal procedure will be concluded within three months and the court will, three months after the date of the order in respect of company reorganization, order that the company reorganization is terminated. Where special cause exists, the court may prolong the period of the reorganization. However, a company reorganization may not proceed for a period longer than one year in total, in the absence of composition proceedings. Costs: Generally more favorable than the bankruptcy proceedings. Because it goes on for a limited period, the costs might be more easily reviewable.
Is there a mandatory set-off of mutual debts on insolvency?	A valid claim against a bankrupt debtor may be used by the creditor to set-off a claim that the bankrupt debtor had against the creditor when the bankruptcy decision was issued. There are certain restrictions limiting the right of set-off in certain situations, where set-off opportunities have been created for improper purposes.	As a rule, a creditor (or someone else) that had a claim against the debtor, when the application for company reorganization was made, may set-off that claim against a claim that the debtor then had against the creditor. This right to set-off applies even if the claim is not due.
Can a debtor continue to carry on business during insolvency proceedings?	No. The debtor is not permitted to enter into obligations or control property belonging to the bankruptcy estate. However, if it is beneficial for the bankruptcy estate to continue the business, the administrator can continue the business for a limited period.	During a company reorganization, the debtor will carry on its business as usual but under the supervision of the administrator, as appointed by the court.

SWEDEN

	Bankruptcy process	Company reorganization process
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions, and what is the directors' liability?	Yes. The Swedish Companies Act (2005:551) (Aktiebolagslagen) provides that the directors of a Swedish limited liability company must take certain actions if the directors have reason to believe that the equity of the company is less than half of the registered share capital. These measures include, among other things, promptly preparing a balance sheet for liquidation purposes (kontrollbalansräkning) and presenting it at a shareholders' meeting. If the shareholders decide to continue the business, they have eight months to restore the capital of the company. If the equity is not restored within eight months, the directors must file for mandatory liquidation. If the directors fail to take these measures, they can become liable for any debts and obligations of the company that arise during the period that they do not comply with the relevant rules. Furthermore, the directors may become subject to criminal liability under the Swedish Penal Code (1962:700) (Brottsbalken). This is if they continue trading and spend considerable resources without obtaining corresponding benefits to the company, when the company is insolvent or when there is a danger of immediate insolvency. Finally, directors may be held liable for any taxes and fees that are not duly paid by the company. In many cases, the potential personal liability for tax obligations is what causes the directors to submit a bankruptcy application in respect of an insolvent company.	Yes. The Swedish Companies Act (2005:551) (Aktiebolagslagen) provides that the directors of a Swedish limited liability company must take certain actions if the directors have reason to believe that the equity of the company is less than half of the registered share capital. These measures include, among other things, promptly preparing a balance sheet for liquidation purposes (kontrollbalansräkning) and presenting it at a shareholders' meeting. If the shareholders decide to continue the business, they have eight months to restore the capital of the company. If the equity is not restored within eight months, the directors must file for mandatory liquidation. If the directors fail to take these measures, they can become liable for any debts and obligations of the company that arise during the period that they do not comply with the relevant rules. Furthermore, the directors may become subject to criminal liability under the Swedish Penal Code (1962:700) (Brottsbalken). This is if they continue trading and spend considerable resources without obtaining corresponding benefits to the company, when the company is insolvent or when there is a danger of immediate insolvency. Finally, directors may be held liable for any taxes and fees that are not duly paid by the company. In many cases, the potential personal liability for tax obligations is what causes the directors to submit a bankruptcy application in respect of an insolvent company.
What is the order of priority of claims?	The general order of priority of claims is as follows: 1. specific priority claims (e.g., possessory liens, mortgages in real property, etc.) 2. general priority claims (e.g., credits bankruptcy costs, employees' wages, etc.) 3. un-prioritized claims	N/A

SWEDEN

	Bankruptcy process	Company reorganization process
Are there any pension liabilities?	Yes.	Yes. Since the debtor does not change its legal person due to the company reorganization, the general rule is that all the debtor's agreements will continue "as is" during the company reorganization.
Is it possible to challenge prior transactions?	Yes. It is possible to challenge prior transactions through recovery. Recovery means that property or payment, which the debtor has distributed or made to someone else, is restored or repaid to the bankruptcy estate. Such recovery may, under the Bankruptcy Act, take place in certain cases. For instance, a gift is annulled if it has been completed up to six months before the day upon which the petition to declare the debtor bankrupt was filed with the district court ("the day of grace"), and payment of wages, fees or pension, made up to six months before the day of grace and that obviously exceeded what could be regarded as reasonable having regard to the work performed, the profitability of the operation and circumstances in general, is to be annulled. The same goes for payment of debt to specific creditors to the detriment of other creditors, or the sale or distribution of any asset below market price. As a rule, any legal action by the bankrupt company six months prior to the bankruptcy decision to the detriment of the creditors as a whole, is recoverable to the estate. If the beneficiary is related to the bankrupt entity or person, this period can, as a rule, be as long as five years prior to the bankruptcy.	Yes. It is possible to challenge prior transactions through recovery if public composition takes place. Recovery means that property or payment, which the debtor has distributed or made to someone else is restored or repaid to the bankruptcy estate. Such recovery may, under the Bankruptcy Act, take place in certain cases. For instance, a gift is annulled if it has been completed up to six months before the day upon which the petition to declare the debtor bankrupt was filed with the district court ("the day of grace"), and payment of wages, fees or pension, made up to six months before the day of grace and that obviously exceeded what could be regarded as reasonable having regard to the work performed, the profitability of the operation and circumstances in general, is to be annulled. The same goes for payment of debt to specific creditors to the detriment of other creditors, or the sale or distribution of any asset below market price. As a rule, any legal action by the bankrupt company six months prior to the bankruptcy decision to the detriment of the creditors as a whole, is recoverable to the estate. If the beneficiary is related to the bankrupt entity or person, this period can, as a rule, be as long as five years prior to the bankruptcy.

SWEDEN

	Bankruptcy process	Company reorganization process
Is state support for distressed businesses available?	Yes. The wage guarantee is provided for under the Swedish Wage Guarantee Act (1992:497) (Lönegarantilag). It provides state support for employees that have a prioritized claim for unpaid wages against their employer. However, the support from the wage guarantee is limited to a certain amount for each employee. There is legislation that ensures the solvency of Swedish banks. Instead of commencing the customary insolvency, the Swedish state can take control over the bank in proceedings called resolution in accordance with the Swedish Resolution Act (SFS 2015:1016) (Lag om resolution). Also, the bank deposit guarantee fund guarantees deposits with banks, credit market companies and certain securities companies of up to a limited amount under the Swedish Deposit Guarantee Act (1995:1571) (Lag om insättningsgaranti).	Yes. The wage guarantee is provided for under the Swedish Wage Guarantee Act (1992:497) (Lönegarantilag). It provides state support for employees that have a prioritized claim for unpaid wages against their employer. However, the support from the wage guarantee is limited to a certain amount for each employee. There is legislation that ensures the solvency of Swedish banks. Instead of commencing the customary insolvency, the Swedish state can take control over the bank in proceedings called resolution in accordance with the Swedish Resolution Act (SFS 2015:1016) (Sw. Lag om resolution). Also, the bank deposit guarantee fund guarantees deposits with banks, credit market companies and certain securities companies of up to a limited amount under the Swedish Deposit Guarantee Act (1995:1571) (Lag om insättningsgaranti).
COVID-19		
Is state support for distressed businesses available?	Yes. Several general measures are imposed as a crisis package for Swedish businesses, among other things, short-term layoffs, liquidity reinforcement via tax accounts for VAT, employers' and employees' social security contributions, temporary responsibility of the government for sick pay and temporary discount for rental costs in vulnerable sectors.	Yes. Several general measures are imposed as a crisis package for Swedish businesses, among other things, short-term layoffs, liquidity reinforcement via tax accounts for VAT, employers' and employees' social security contributions, temporary responsibility of the government for sick pay and temporary discount for rental costs in vulnerable sectors.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	No.	No.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	No.	No.

UPDATED MAY 5, 2020

SWITZERLAND

SWITZERLAND	Bankruptcy	Composition proceedings
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	In Switzerland, security packages typically consist of share pledges, security assignments of trade receivables, insurance claims and intragroup claims, bank account pledges and security over real property. No asset security or floating charges are available under Swiss law. In general, the creation of a security interest over movable assets requires possession of those assets to pass from the security provider to the secured party. In general, no security over movable assets can be created by registration into a public register. Certain exceptions exist for assets that define ownership based on a register entry, such as ships and aircraft. Due to the requirement that possession of the security object must pass from the security provider to the secured party, Swiss security packages will, in very rare cases, include security over working capital as this may not only lead to a disruption of the daily business of the security provider but also be hardly manageable for the secured party.	Within the composition proceedings, the same fundamental principles of Swiss law apply. During the composition moratorium, however, the debtor may only grant security with the prior consent of the composition court or, if appointed, the creditor committee.
What is the nature of the process?	The bankruptcy proceedings lead to the liquidation of the debtor's assets.	Composition proceedings are initiated by a composition moratorium. If the debtor can be restructured during the composition moratorium (which is very rare), the composition court will lift the moratorium and the debtor will go back to the ordinary course of business. If there are no prospects for a restructuring of the debtor or for the confirmation of a composition agreement, the court will open bankruptcy proceedings. Typically, the composition moratorium will end with either an ordinary composition agreement or a composition agreement with assignment of assets. Lawmakers intended the ordinary composition agreement as corporate rehabilitation proceedings, as the company is released from the composition procedure. However, most composition procedures lead to a composition agreement with assignment of assets, which is an insolvent liquidation of the debtor.

SWITZERLAND

	Bankruptcy	Composition proceedings
What is the solvency requirement?	The relevant insolvency trigger is over-indebtedness (Überschuldung). If a corporation's board of directors has (or should have) reason to believe that the corporation's liabilities exceed its assets, it is obliged to immediately prepare an interim balance sheet at going concern (if there is still a going concern scenario) and at liquidation values and to have it audited by a certified auditor. If that interim balance sheet shows that the corporation is over-indebted (i.e., its liabilities exceed its assets) at going concern as well as at liquidation values, the board of directors is obliged to file for bankruptcy with the competent court unless, (i) creditors with claims in an aggregate amount no lower than the amount of the corporation's over-indebtedness subordinate their claims against the claims of all other creditors, or (ii) there is a substantiated likelihood for an informal (i.e., out-of-court) restructuring within a short time. It is not settled in Swiss case law as to how long such a period is supposed to be. However, many legal scholars consider such a period to be four to six weeks. As an alternative to filing for bankruptcy, the corporation's board of directors may apply for the opening of composition proceedings. While the criterion of over-indebtedness is based on a balance sheet test (rather than a liquidity test), it is important to note that a corporation's inability to pay its debts, as and when they fall due within the next 12 months, will cause the corporation to lose the going concern assumption for accounting purposes and lead to an obligation to account for liquidation values only. This, in turn, will typically result in over-indebtedness. On 25 March 2020, the Swiss government implemented emergency measures to support businesses impacted by the consequences of the COVID-19 pandemic. Until 31 March 2022, fully state-backed loans of up to CHF 500,000 granted under these emergency measures will not be considered as a liability for the purpose of calculating the coverage of capital and reserves and for calculating over-indebtedness (see Article 24 of the Ordinance on Granting Credit and Joint Guarantees as a Consequence of the Coronavirus dated 25 March 2020 and section **Is state support for distressed businesses available?**)	Generally speaking, the requirements for the availability of composition proceedings are rather low and there is no particular solvency requirement. Courts may only refuse to grant a provisional composition moratorium if there are obviously no prospects for rehabilitation or for the confirmation of a composition agreement.
Is there a requirement to demonstrate COMI ("centre of main interests")?	Bankruptcy proceedings are only available to debtors with a registered office in Switzerland. COMI is not a relevant factor for the initiation of primary proceedings in Switzerland.	Composition proceedings are only available to debtors with a registered office in Switzerland. COMI is not a relevant factor for the initiation of primary proceedings in Switzerland.
Is restructuring of both secured and unsecured claims possible?	Not applicable. The proceedings lead to the liquidation of the debtor's assets.	The restructuring of secured claims is only possible with the consent of the secured party.

SWITZERLAND	Bankruptcy	Composition proceedings
Is there a classification of creditors and shareholders?	Once the content of the estate is clarified, all assets are realized by way of a public auction, unless the creditors decide to sell assets privately. Costs and expenses of the proceedings are paid with priority over other claims. The preferential treatment of costs and expenses extends to any agreements the debtor entered into or prolonged after the opening of bankruptcy proceedings, such as rental agreements for offices or storage facilities, as well as the claims of employees who continued to work after the opening of bankruptcy proceedings. With respect to all other claims, Swiss mandatory law distinguishes between the following categories of creditors: (i) secured creditors; (ii) two classes of statutorily preferred creditors; (iii) general unsecured, unsubordinated creditors; and (iv) subordinated creditors. Statutorily preferred creditors are mainly employees in respect of various claims (e.g., a capped amount of claims under the employment agreement to the extent they have arisen or fallen due within six months prior to the opening of bankruptcy) and various social insurance schemes in respect of the debtor's contributions. Given the nature of the bankruptcy proceedings, shareholders do not participate in such proceedings.	The classification of creditors and shareholders is the same as in bankruptcy proceedings. It is a prerequisite for the court's confirmation of the composition agreement that the satisfaction of the claims of all privileged creditors be secured (unless individual creditors waive their right to such security).
Is there a requirement for voting approvals by shareholders?	There is no shareholder vote.	There is no shareholder vote.
Is there a requirement for voting approvals by shareholders creditors?	In general, the claims of shareholders' creditors (e.g., under shareholder loans) are treated equally to the claims of all other creditors, subject to and in accordance with the statutory classification of creditors. This means that shareholder creditors have the same voting rights as the other creditors in the same class.	In general, the claims of shareholders' creditors (e.g., under shareholder loans) are treated equally to the claims of all other creditors, subject to and in accordance with the statutory classification of creditors. This means that shareholder creditors have the same voting rights as the other creditors in the same class.
Is there an ability to bind minority dissenting creditors?	Not applicable.	Yes. Dissenting unsecured and non-privileged creditors may be crammed down if the creditors have approved the composition agreement. Such approval requires either (i) the majority of the unsecured and non-privileged creditors whose claims amount to at least two-thirds of all unsecured and non-privileged claims, or (ii) one-quarter of the unsecured and non-privileged creditors whose claims amount to at least three-quarters of the unsecured and non-privileged claims. Secured and privileged creditors may not be crammed down.

SWITZERLAND

	Bankruptcy	Composition proceedings
COMMENCING THE PROCESS		
Who can commence?	In Switzerland, a corporation may file for its own bankruptcy upon determination of illiquidity or over-indebtedness, if the directors do not succeed in negotiating private restructuring measures or composition agreements. Bankruptcy proceedings may also be initiated by any individual creditor by applying to the competent bankruptcy court for an order to declare the corporation's bankruptcy after having gone through the statutory debt enforcement procedure with respect to any financial claim (even of nominal value) against the corporation. During the course of the statutory debt enforcement procedure, the corporation can raise various legal defences with respect to the financial claim asserted by the applicant. Limited defences are available with respect to financial claims asserted in connection with promissory notes or bills of exchange drawn on the corporation. In addition, any individual creditor may apply to the competent bankruptcy court for an order to declare the corporation's bankruptcy without first having to go through the statutory debt enforcement procedure if the creditor can demonstrate that the debtor has ceased to make payments. The debtor's right to manage its affairs ceases with the bankruptcy decree. The bankruptcy court can (i) postpone the issuance of the bankruptcy decree if there is a prospect of debt restructuring or (ii) order a composition moratorium if there is a prospect of a composition agreement.	Composition proceedings may be commenced by the debtor, by certain creditors and by the bankruptcy court.
Is shareholder's consent required to commence proceeding?	No.	No.
Is there an ability to consolidate group estates?	No. Each legal entity will be treated separately. However, in the case of multiple proceedings in Switzerland with an intrinsic connection (such as in the case of bankruptcy proceedings over several entities of the same group), the competent Swiss courts are bound to coordinate their activities and may agree on one uniform place of jurisdiction.	No. Each legal entity will be treated separately. However, in the case of multiple proceedings in Switzerland with an intrinsic connection (such as in the case of composition proceedings over several entities of the same group), the competent Swiss courts are bound to coordinate their activities and may agree on one uniform place of jurisdiction.
Is there any court involvement?	Yes.	Yes.

SWITZERLAND

	Bankruptcy	Composition proceedings
Who manages the debtor?	The debtor's right to manage its affairs ceases with the bankruptcy decree. The bankrupt estate is deemed a legal entity whose rights are represented by the bankruptcy administrator.	As a rule, during the composition moratorium, the debtor may continue to manage its affairs under the supervision of the court-appointed composition commissioner. However, the court may order that (i) certain actions require the approval of the composition commissioner or (ii) the composition commissioner manages the debtor's affairs on the debtor's behalf. Certain actions (such as the sale of fixed assets or the granting of security over the debtor's assets) require the prior consent of the composition court or, if appointed, the creditor committee. In the case of a composition agreement with the assignment of assets, the debtor's right to manage its affairs ceases with the court's confirmation of the composition agreement. A liquidator then represents the estate.
What is the level of disclosure of process to voting creditors?	In case of bankruptcy, the creditors can, in principle, request disclosure of all documents that are in possession of the bankruptcy administrator.	The composition commissioner makes available the relevant files to all creditors during a period of at least 20 days prior to the creditors' meeting relating to the approval of the composition agreement. During the creditors' meeting, the composition commissioner reports on the status of the debtor's financial affairs. In addition, the debtor must be present or represented at the creditors' meeting and must answer the creditors' questions.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	All entities registered in the Swiss commercial register are subject to bankruptcy proceedings. Trusts are subject to bankruptcy proceedings, but only in relation to the trust's assets. Banks, insurance companies, collective investment schemes, securities dealers, portfolio managers, managers of collective assets and financial market infrastructures (such as stock exchanges) are subject to separate insolvency regimes based on prudential regulation (in particular, the Swiss Banking Act, the Swiss Collective Investment Schemes Act, the Swiss Insurance Supervision Act and the Swiss Financial Market Infrastructure Act). Furthermore, municipalities and other bodies of cantonal public law are subject to insolvency regimes pursuant to the Swiss Act on Debt Enforcement and Bankruptcy against municipalities and other bodies of cantonal public law.	All entities subject to ordinary debt enforcement and bankruptcy proceedings may be subject to composition proceedings. Banks, insurance companies, collective investment schemes, securities dealers portfolio managers, managers of collective assets and financial market infrastructures (such as stock exchanges) are subject to separate insolvency regimes based on prudential regulation (in particular, the Swiss Banking Act, the Swiss Collective Investment Schemes Act, the Swiss Insurance Supervision Act and the Swiss Financial Market Infrastructure Act). Furthermore, municipalities and other bodies of cantonal public law are subject to insolvency regimes pursuant to the Swiss Act on Debt Enforcement and Bankruptcy against municipalities and other bodies of cantonal public law.

SWITZERLAND	Bankruptcy	Composition proceedings
How long does it generally take for a creditor to commence the procedure?	In order to commence bankruptcy proceedings, a creditor may have to go through lengthy debt enforcement proceedings. Once the creditor has reached that stage, it may commence bankruptcy proceedings easily and quickly by application to the competent court. In certain exceptional circumstances (e.g., concealment of assets, fraudulent action or suspension of payments), the creditor can apply for bankruptcy proceedings directly at the bankruptcy court without first going through debt enforcement proceedings.	A creditor may only commence composition proceedings if it is entitled to request the debtor's bankruptcy. In order to get to that stage, a creditor may have to go through lengthy debt enforcement proceedings. Once the creditor has reached that stage, it may commence composition proceedings easily and quickly by application to the competent court for a provisional composition moratorium. The court is bound to decide immediately (i.e., within a couple of days) on whether or not to grant the provisional composition moratorium.
EFFECT OF PROCESS		
Does the debtor remain in possession with the continuation of incumbent management control?	No. The debtor's right to manage its affairs ceases with the bankruptcy decree.	As a rule, during the composition moratorium, the debtor may continue to manage its affairs under the supervision of the court-appointed composition commissioner. However, the court may order that (i) certain actions require the approval of the composition commissioner or (ii) the composition commissioner manages the debtor's affairs on the debtor's behalf. Certain actions (such as the sale of fixed assets or the granting of security over the debtor's assets) require the prior consent of the composition court or, if appointed, the creditor committee. In the case of a composition agreement with the assignment of assets, the debtor's right to manage its affairs ceases with the court's confirmation of the composition agreement.
What is the stay/moratorium regime (if any)?	Not applicable. Bankruptcy leads to the liquidation of the debtor's assets.	Composition proceedings begin with a provisional composition moratorium as a first instrument of creditor protection. The total duration of the provisional composition moratorium may, in any case, not exceed four months. The provisional composition moratorium is not granted automatically, but only by a court decision. After determining that there are prospects for rehabilitation, the court will set a fixed composition moratorium for a period of four to six months (which can be extended to a maximum period of up to two years in complex cases) to allow for the negotiation of the composition agreement. During the composition moratorium, enforcement proceedings against the debtor may neither be continued nor initiated. In addition, any interest on unsecured claims ceases to accrue.
Is there a provision for debtor-in-possession super priority financing?	Whereas the bankrupt estate is able to enter into contracts even after the issuance of the bankruptcy decree, the financing of a bankrupt estate is not relevant in practice.	Yes. Liabilities incurred by the debtor, during the composition moratorium with the consent of the composition commissioner, will be satisfied in priority over claims of other creditors in an ensuing liquidation or bankruptcy of the debtor.

SWITZERLAND	Bankruptcy	Composition proceedings
Can the procedure be used to implement a debt-to-equity swap?	No.	Yes. In a composition agreement with partial waiver of claims, the creditors may agree that some or all of the creditors' remaining claims (i.e., remaining after the partial waiver) may be settled by way of transfer of ownership of shares in the debtor or in a special purpose vehicle (typically being a newly incorporated wholly owned subsidiary of the debtor that is the transferee of the debtor's viable assets). To the extent that the composition agreement may be declared binding on non-consenting creditors, this mechanism may be considered a mandatory debt-to-equity swap.
Are third-party releases available?	No.	No.
Are the proceedings recognised abroad?	Yes, subject to and in accordance with applicable (foreign) conflict of laws rules and international treaties.	Yes, subject to and in accordance with applicable (foreign) conflict of laws rules and international treaties.
Has the UNCITRAL Model Law been adopted?	No.	No.
How long, complex and expensive is the process	Timeframe, complexity and costs will vary on a case-by-case basis.	Timeframe, complexity and costs will vary on a case-by-case basis. In general, the procedure is more costly than a bankruptcy.
Is there a mandatory set-off of mutual debts on insolvency?	No.	No.
Can a debtor continue to carry on business during insolvency proceedings?	No.	As a rule, during the composition moratorium, the debtor may continue to carry on business under the supervision of the court-appointed composition commissioner. However, the court may order that (i) certain actions require the approval of the composition commissioner or (ii) the composition commissioner manages the debtor's affairs on the debtor's behalf. Certain actions (such as the sale of fixed assets or the granting of security over the debtor's assets) require the prior consent of the composition court or, if appointed, the creditor committee. In the case of a composition agreement with an assignment of assets, the debtor's right to manage its affairs ceases with the court's confirmation of the composition agreement.

SWITZERLAND

	Bankruptcy	Composition proceedings
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Under Swiss law, insolvent trading is the act of a corporation continuing to trade in circumstances where its board of directors has failed to file for bankruptcy or apply for a composition moratorium despite being obliged to do so. Directors are subject to personal civil liability for damages for any losses caused by insolvent trading. In order to determine damages, a court will typically compare the hypothetical amount of the corporation's over-indebtedness, at the time when its board of directors should have filed for bankruptcy or applied for a composition moratorium, with the (higher) amount of its over-indebtedness, at the time when the board of directors actually filed for bankruptcy or applied for a composition moratorium. In severe cases, directors may even be subject to criminal sanctions.	Under Swiss law, insolvent trading is the act of a corporation continuing to trade in circumstances where its board of directors has failed to file for bankruptcy or apply for a composition moratorium despite being obliged to do so. Directors are subject to personal civil liability for damages for any losses caused by insolvent trading. In order to determine damages, a court will typically compare the hypothetical amount of the corporation's over-indebtedness, at the time when its board of directors should have filed for bankruptcy or applied for a composition moratorium, with the (higher) amount of its over-indebtedness, at the time when the board of directors actually filed for bankruptcy or applied for a composition moratorium. In severe cases, directors may even be subject to criminal sanctions.
What is the order of priority of claims?	Once the content of the estate is clarified, all assets are realized by way of a public auction, unless the creditors decide to sell assets privately. Costs and expenses of the proceedings are paid with priority over other claims. The preferential treatment of costs and expenses extends to any agreements the debtor entered into or prolonged after the opening of bankruptcy proceedings, such as rental agreements for offices or storage facilities, as well as the claims of employees who continued to work after the opening of bankruptcy proceedings. With respect to all other claims, Swiss mandatory law distinguishes between the following categories of creditors: (i) secured creditors; (ii) two classes of statutorily preferred creditors; (iii) general unsecured, unsubordinated creditors; and (iv) subordinated creditors. Statutorily preferred creditors are mainly employees in respect of various claims (e.g., a capped amount of claims under the employment agreement to the extent they have arisen or fallen due within six months prior to the opening of bankruptcy) and various social insurance schemes in respect of the debtor's contributions.	In the liquidation of the debtor, which is conducted as a result of the confirmation of a composition agreement with assignment of assets, the order of priority of claims is the same as in bankruptcy.
Are there any pension liabilities?	In the Swiss pension system, pension funds are legally separated entities from employers. Therefore, employees' claims for pension payments are vis-à-vis the respective pension fund, rather than the employer. Employers are liable vis-à-vis pension funds for certain contribution payments, and such contribution claims constitute priority claims in the employer's insolvency.	In the Swiss pension system, pension funds are legally separated entities from employers. Therefore, employees' claims for pension payments are vis-à-vis the respective pension fund, rather than the employer. Employers are liable vis-à-vis pension funds for certain contribution payments, and such contribution claims constitute priority claims in the employer's insolvency.

SWITZERLAND

	Bankruptcy	Composition proceedings
Is it possible to challenge prior transactions?	Yes. The bankruptcy administration and — under certain conditions — individual creditors can sue for the avoidance of actions by the debtor that (i) were taken during a certain period prior to the opening of the debtor's bankruptcy (so-called période suspecte), (ii) were to the disadvantage of the debtor's creditors, and (iii) fulfil the requirements of one of the avoidance provisions set out in the Bankruptcy Act. These provisions relate to (a) voidability of a gift (with a période suspecte of one year), (b) voidability due to over-indebtedness (with a période suspecte of one year), and (c) voidability for intent (with a période suspecte of five years). In addition, the set-off by a third-party debtor of a bankrupt corporation is voidable if that third-party debtor acquired a claim against the corporation prior to the opening of the corporation's bankruptcy, but in awareness of the corporation's illiquidity, in order to gain, by way of set-off, an advantage for itself or a third party to the detriment of the bankrupt estate.	Yes. Avoidance actions that are available in the debtor's bankruptcy are also available after the court's confirmation of a composition agreement with assignment of assets.
Is state support for distressed businesses available?	If an employer has become insolvent and can no longer pay the outstanding salaries of its employees, the unemployment insurance covers salary claims for work performed under certain conditions. The insurance protection is limited to the last four months of the employment relationship. The unemployment insurance has a recourse against the bankrupt company. Further state support may be available under legislation relating to regional politics. As a consequence of the COVID-19 pandemic, the Swiss federal and cantonal governments implemented several emergency measures to support businesses impacted by the consequences of the COVID-19 pandemic. As part of these measures, the federal government implemented a loan scheme allowing affected companies to obtain state-backed loans of up to 10% of their turnover (up to a maximum of CHF 20 million) from their respective banks. The scheme provides for two types of state-backed loans, namely (a) loans of up to CHF 500,000 at an interest rate of 0% that are fully guaranteed by the Swiss Confederation, and (b) loans up to CHF 20 million that are guaranteed in an amount of 85% by the Swiss Confederation and subject to a 0.5% interest rate on the guaranteed portion of the loan, it being understood that the credit risk for the remaining 15% is borne by the bank (see also section **What is the solvency requirement?**).	If an employer has become insolvent and can no longer pay the outstanding salaries of its employees, the unemployment insurance covers salary claims for work performed under certain conditions. The insurance protection is limited to the last four months of the employment relationship. The unemployment insurance has a recourse against the bankrupt company. Further state support may be available under legislation relating to regional politics. As a consequence of the COVID-19 pandemic, the Swiss federal and cantonal governments implemented several emergency measures to support businesses impacted by the consequences of the COVID-19 pandemic. As part of these measures, the federal government implemented a loan scheme allowing affected companies to obtain state-backed loans of up to 10% of their turnover (up to a maximum of CHF 20 million) from their respective banks. The scheme provides for two types of state-backed loans, namely (a) loans of up to CHF 500,000 at an interest rate of 0% that are fully guaranteed by the Swiss Confederation, and (b) loans up to CHF 20 million that are guaranteed in an amount of 85% by the Swiss Confederation and subject to a 0.5% interest rate on the guaranteed portion of the loan, it being understood that the credit risk for the remaining 15% is borne by the bank (see also section **What is the solvency requirement?**)

SWITZERLAND

	Bankruptcy	Composition proceedings
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	On 18 March 2020, the Swiss federal government ordered a temporary legal stay regarding the initiation of debt enforcement proceedings (Rechtsstillstand). During this legal stay, debtors could not be served any debt collection documents. The standstill applied from 19 March 2020 until 4 April 2020. The statutory debt collection holidays began immediately afterwards. These had the same effects and lasted until 19 April 2020. On 25 March 2020, the Swiss government implemented emergency measures to support businesses impacted by the consequences of the COVID-19 pandemic. Until 31 March 2022, fully state-backed loans of up to CHF 500,000 granted under these emergency measures will not be considered as a liability for the purpose of calculating the coverage of capital and reserves and for calculating over-indebtedness (see sections **What is the solvency requirement**? **And Is state support for distressed businesses available?**).	On 18 March 2020, the Swiss federal government ordered a temporary legal stay regarding the initiation of debt enforcement proceedings (Rechtsstillstand). During this legal stay, debtors could not be served any debt collection documents. The standstill applied from 19 March 2020 until 4 April 2020. The statutory debt collection holidays began immediately afterwards. These had the same effects and lasted until 19 April 2020. On 25 March 2020, the Swiss government implemented emergency measures to support businesses impacted by the consequences of the COVID-19 pandemic. Until 31 March 2022, fully state-backed loans of up to CHF 500,000 granted under these emergency measures will not be considered as a liability for the purpose of calculating the coverage of capital and reserves and for calculating over-indebtedness (see sections **What is the solvency requirement? And Is state support for distressed businesses available?**).
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	The Swiss federal government is currently examining further measures to help companies threatened by the economic consequences of the pandemic. In this context, the federal government has proposed to temporarily suspend the obligation to file for bankruptcy in case of over-indebtedness (see section **What is the solvency requirement?**) in the event that there is a realistic prospect of eliminating the over-indebtedness within six months after the end of the government's emergency COVID-19 measures. In addition, the government has proposed to temporarily amend some of the provisions dealing with composition proceedings and to introduce a simplified composition procedure for companies affected by the pandemic (see also section W**hat is the stay/moratorium regime (if any)?**). A public consultation on these proposals was concluded on 3 April 2020. As of 15 April 2020, the government had not yet communicated whether or not and in what form these proposals will be adopted.	The Swiss federal government is currently examining further measures to help companies threatened by the economic consequences of the pandemic. In this context, the federal government has proposed to temporarily suspend the obligation to file for bankruptcy in case of over-indebtedness (see section **What is the solvency requirement?**) in the event that there is a realistic prospect of eliminating the over-indebtedness within six months after the end of the government's emergency COVID-19 measures. In addition, the government has proposed to temporarily amend some of the provisions dealing with composition proceedings and to introduce a simplified composition procedure for companies affected by the pandemic (see also section **What is the stay/moratorium regime (if any)?**). A public consultation on these proposals was concluded on 3 April 2020. As of 15 April 2020, the government had not yet communicated whether or not and in what form these proposals will be adopted.

UPDATED MAY 5, 2020

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Bankruptcy process

INITIAL CONSIDERATIONS	
Can you take security over all types of assets, including working capital?	Yes, but note that Taiwan law generally only permits fixed (and not floating) security. There is no concept of a floating charge or debenture over all of any property of a company.
What is the nature of the process?	If a debtor becomes insolvent and cannot repay its debt, the creditors or the debtor can apply to the court for the adjudication of bankruptcy against the debtor. The debtor will become bankrupt upon the court making a declaration of bankruptcy. After the debtor is declared bankrupt, its property at the time of the declaration by the court will become part of the bankruptcy estate and the bankruptcy procedure will apply.
What is the solvency requirement?	The solvency requirement is where a debtor is unable to pay its debts. If the assets of a company are insufficient to satisfy its liabilities, the board of directors is required to apply to the court for a pronouncement of its bankruptcy unless the company is a public company. A company may recover if a moratorium can be entered with creditors and has petitioned the court for reorganization pursuant to the Company Act.
Is there a requirement to demonstrate COMI ("centre of main interests")?	No. All Taiwan registered entities and resident individuals are subject to Taiwan bankruptcy proceedings. The Bankruptcy Act provides that a bankruptcy proceeding declared in a foreign jurisdiction with respect to an entity is not effective as to any asset of such entity located in Taiwan and effectively requires that foreign companies subject to bankruptcy or liquidation proceedings in their home jurisdiction deal with their assets and liabilities in Taiwan (e.g., held in a branch), through Taiwan bankruptcy or liquidation proceedings.
Is restructuring of both secured and unsecured claims possible?	Yes, if the creditors agree. The bankrupt entity may submit to a plan setting forth the percentage and term for repayment of debts to the creditors' meeting for approval. If the court considers the plan approved by the creditors' meeting fair, it may issue a court order to approve the plan.

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Bankruptcy process

Is there a classification of creditors and shareholders?	Creditors: secured vs. unsecured. Secured creditors who had a security interest over the company's assets prior to the declaration of bankruptcy are entitled to a right of exclusion. In that case they are not required to participate in the bankruptcy proceedings and may enforce their claims outside those proceedings. They may file a claim in accordance with the bankruptcy proceeding for any portion of the debts due to them that remain unsettled after the exercise of the right of exclusion. Shareholders: preference vs. ordinary shareholders. Preference share shareholders may have priority over ordinary share shareholders if so provided in the terms of the preference shares and the articles of incorporation of the company.
Is there a requirement for voting approvals by shareholders?	No. Creditors or the board of directors of the company can petition the court for bankruptcy.
Is there a requirement for voting approvals by shareholders' creditors?	No.
Is there an ability to bind minority dissenting creditors?	Yes. All creditors are bound by the bankruptcy proceedings provided that secured creditors may directly enforce against the assets over which they hold security. In the course of bankruptcy proceedings, resolutions passed at creditors' meeting require approval by a majority of creditors representing at least two-thirds of the aggregate amount of all claims and will then be binding on all creditors unless the court determines upon application from the bankruptcy trustee or creditors that the decision is contrary to the interests of creditors.

COMMENCING THE PROCESS

Who can commence?	A bankruptcy petition may be filed by either: (i) the insolvent debtor as a voluntary bankruptcy petition; or (ii) one or more of its creditors as an involuntary bankruptcy petition. However, in the event a company's assets are not sufficient to pay off its debt, the company's board of directors must file a bankruptcy petition immediately. Unless the company is a public company, it may recover if a moratorium can be entered with creditors and if it has petitioned for reorganization.
Is shareholders' consent required to commence proceedings?	No. When the bankruptcy proceeding is initiated by the insolvent company, the decision to file for bankruptcy does not require shareholders' consent.

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Bankruptcy process

Is there an ability to consolidate group estates?	No.
Is there any court involvement?	Yes. Upon receiving the bankruptcy application, the court will begin its investigation and seek the opinion of the debtors, creditors and other interested parties. Once the court adjudicates a debtor as bankrupt, it will appoint a bankruptcy trustee, typically a CPA, lawyer or creditor, to oversee and manage the sale and distribution of the bankrupt's properties. The Bankruptcy Act requires the court to issue a public notice informing creditors to report and file their claims with the bankruptcy administrator within a specified period.
Who manages the debtor?	The bankruptcy trustee, typically a CPA, lawyer or creditor, oversees and manages the sale and distribution of the bankrupt's properties.
What is the level of disclosure of the process to voting creditors?	At the creditors' meeting, the bankruptcy trustee should: (i) present the list of claims and list of assets; and (ii) report on the status of the bankruptcy matters.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Bankruptcy proceedings: These proceedings generally apply to all private legal persons. Reorganization proceedings: Where a company that publicly issues shares or corporate bonds suspends its business due to financial difficulty or where there is an apprehension of suspension of business thereof, but there is a possibility for the company to be constructed or rehabilitated, the company or any of the following interested parties may apply to the court for reorganization.
How long does it generally take for a creditor to commence the procedure?	Upon receiving the bankruptcy application, the court will begin its investigation and seek the opinion of the debtors, creditors and other interested parties. Although the court is required to accept or reject the bankruptcy application within seven days of receiving it, it can take longer and the seven-day period is not a statutory deadline.

EFFECT OF PROCESS

Does the debtor remain in possession with the continuation of incumbent management control?	No. Once the debtor is declared bankrupt, it immediately loses rights to manage and/or dispose of the assets belonging to the bankruptcy estate.
What is the stay/moratorium regime (if any)?	When an application for bankruptcy is received, the court may, ex officio or upon application of the creditors, give an order for precautionary measures such as to freeze the debtor's property from being disposed of, transferred or sold before the bankruptcy is adjudicated. When a party is adjudicated bankrupt, the proceedings of all actions concerning the "bankrupt's estate" must be stayed automatically until a qualified person (i.e., the bankruptcy trustee) assumes the action pursuant to the Bankruptcy Act or the bankruptcy proceeding is concluded.

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Bankruptcy process	
Is there a provision for debtor-in-possession super priority financing?	No.
Can the procedure be used to implement a debt-to-equity swap?	No. The ultimate goal of the bankruptcy proceedings is to distribute the assets of the bankrupt entity among its creditors. The bankrupt entity will be dissolved after the conclusion of the bankruptcy proceeding so there is not a proceeding to implement debt-to-equity swap.
Are third-party releases available?	No.
Are the proceedings recognized abroad?	This depends on the insolvency regimes in the relevant overseas jurisdictions.
Has the UNCITRAL Model Law been adopted?	No.
How long, complex and expensive is the process?	In practice, a bankruptcy proceeding may take several years to conclude. The main reason is that it is very common for a bankruptcy trustee to challenge the existence or amount of claims filed by creditors unless such claims were determined by the court in a final judgment.
Is there a mandatory set-off of mutual debts on insolvency?	No. Set-off of mutual debts is not mandatory. Creditors who are also debtors of the bankrupt may set off the claims provided the claims arose prior to the adjudication of bankruptcy. The provable claims that have not yet become mature will be deemed to have matured upon the adjudication of the bankruptcy.
Can a debtor continue to carry on business during insolvency proceedings?	No. However, prior to the first creditors' meeting, the bankruptcy trustee, with approval from the court, may continue the business of the bankrupt to the extent necessary to handle bankruptcy.

TAIWAN

Bankruptcy process

OTHER FACTORS

Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	A responsible person (including the director, supervisor and managers) of a company shall exercise the care and fiduciary duty of a good administrator and abide by principles of good faith and integrity in performing their duties. If the responsible person of a company has, in the course of conducting the business operations, violated any provision of the applicable laws and/or regulations and thus caused damage to any other person, the responsible person may be liable, jointly and severally with the company, for the damage to such other person.
What is the order of priority of claims?	According to the Labor Standards' Act, Tax Collection Act, Maritime Act, Compulsory Execution Act and the Civil Code, the priority rankings of different types of creditor claims should be the following: 1. the bankruptcy trustee's fees, costs and debts incurred in the administration, realization and distribution of the bankruptcy estate 2. land value incremental tax, land value tax, house tax and VAT for compulsory execution 3. fee for compulsory execution 4. maritime liens 5. mortgages and other perfected security interests 6. employee claims — up to six months' of wages to be payable to employees under their employment contracts, retirement pensions that the employer has failed to disburse in accordance with the Labor Standards Act, severance pay that the employer has failed to disburse in accordance with the Labor Standards Act or the Labor Pension Act 7. tax payments, including income tax and normal VAT8. other claims
Are there any pension liabilities?	Yes. Retirement pensions that the employer has failed to disburse in accordance with the Labor Standards Act will be a priority claim in the bankruptcy.
Is it possible to challenge prior transactions?	Yes. 1. After the adjudication of bankruptcy, the bankruptcy administrator may request the court to avoid any gratuitous or other onerous transfers that are "prejudicial to creditors' rights" completed prior to adjudication, if such transfers are voidable under the ROC Civil Code. Article 244 of the ROC Civil Code provides that any gratuitous transfer that prejudices a debtor's creditors can be voided by the court and that any non-gratuitous transfers prejudicial to creditors and the debtor who is aware of the prejudice at the time of the transfer can be voided by the court. The claim for revocation in Article 244 is extinguished by prescription if not exercised within one year from the moment when the creditor knew of the ground for revocation, or is extinguished after 10 years from the date of doing the act. 2. The bankruptcy trustee may void any provision of security for an existing debt or repayment of any debt before it becomes due, if the provision of security or repayment occurs during the six-month period prior to the adjudication of the bankruptcy.

TAIWAN

Bankruptcy process

COVID-19

Is state support for distressed businesses available?

Yes. The Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens was passed on 25 February 2020. Effective retrospectively from 15 January 2020 and running through 30 June 2021, the act provides for compensation, subsidies and tax breaks for businesses, individuals, medical institutions, schools and other organizations affected by COVID-19. It also offers rewards for those who make significant contributions to outbreak prevention and outlines punishments for violating disease-related regulations.

Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?

Yes. Pursuant to the Ministry of Economic Affairs Relief and Incentive Program for Businesses and Enterprises with Operational Difficulties due to COVID-19 ("Incentive Program"), enterprises that meet the conditions and qualifications outlined below ("Affected Enterprises") may apply for: (i) an extension of the repayment of principal of loans borrowed before such Incentive Program was announced; and (ii) loans to pay wages and rents for factory and business premises. These loans will be guaranteed by the Small and Medium Enterprise Credit Guarantee Fund of Taiwan.

1. Domestic profit-seeking enterprises that have completed company registration, business registration, limited partnership registration or tax registration, or small-sized businesses exempted from registration under the Business Registration Act.
2. Commencing January 2020, their average business turnover in any two consecutive months is 15% or more, less than the average business turnover for the six months before December 2019 or for the same period of the previous year, proven to be true by their competent authorities, agency/organization appointed or contracted by competent authorities or a financial institution.

The Affected Enterprises that borrow loans to pay wages and rents for factory and business premises pursuant to the Incentive Program cannot reduce employees' salaries or lay off employees.

Is further reform of the insolvency regime being discussed/anticipated? If so, give details.

No.

UPDATED MAY 5, 2020

THAILAND

THAILAND	Bankruptcy	Liquidation	Business reorganization
INITIAL CONSIDERATIONS			
Can you take security over all types of assets, including working capital?	Not all types of assets can be secured. Only financial institutions can take security over inventories and account receivables.	Not all types of assets can be secured. Only financial institutions can take security over inventories and account receivables.	Not all types of assets can be secured. Only financial institutions can take security over inventories and account receivables.
What is the nature of the process?	Both personal and corporate bankruptcy proceedings can only be commenced by a creditor NOT a debtor. There are no provisions allowing voluntary bankruptcy under Thai law. Successful verification of the debtor's insolvency by the creditor leads to a court order of absolute receivership. The creditor can also seek a temporary receivership order in order to freeze the debtor's assets or require the debtor to provide security. The process is under judicial supervision, i.e., the bankruptcy court and the official receiver of the Legal Execution Department.	After the dissolution of a company is initiated by the shareholders' resolution, the company status will be deemed to continue for the purpose of liquidation. If it appears to the liquidator that the total assets of the company are insufficient to cover all debts, the liquidator will need to immediately file a petition to the court requesting the company to be declared bankrupt. In this case, the proceedings will be in line with the bankruptcy proceedings.	Both debtors and creditors can commence business reorganization proceedings by filing a petition to the bankruptcy court. Once all criteria under the Bankruptcy Law are satisfied, the court will grant the business reorganization order and appoint the planner. The whole process is under supervision of the bankruptcy court and the official receiver of the Legal Execution Department.

THAILAND

	Bankruptcy	Liquidation	Business reorganization
What is the solvency requirement?	The creditor must prove that: (1) the debtor is insolvent (where the total debt is greater than the total assets); (2) the debtor, who is a juristic person, is indebted to one or several creditors who file the complaint for no less than THB 2 million; and (3) the debt in (2) can be determined as a definite amount, irrespective of whether they become due for payment immediately or at a future date. The court will also consider whether there is any reason why the debtor should not be adjudged bankrupt.	After the capital is settled with the debt, the total assets of the company must be insufficient to cover all debt.	Criteria for instituting a reorganization proceeding include that: (1) the debtor is insolvent or the debtor cannot settle its debt that is due and payable; (2) the debtor is indebted to one or several creditors, for a definite amount of debts of no less than THB 10 million, irrespective of whether they are due for payment immediately or at a future date; and (3) there are justifiable grounds and methods to reorganize the debtor's business.
Is there a requirement to demonstrate COMI ("centre of main interests")?	No.	No.	No.
Is restructuring of both secured and unsecured claims possible?	Yes.	This is not applicable, as the purpose of this regime is to dissolve the company to restructure the business.	Yes.
Is there a classification of creditors and shareholders?	No. The assets are distributed under a waterfall mechanism with certain priority claims. All unsecured creditors with no priority claim will receive repayment on a pro-rata basis. The shareholders may be classified by the company's articles of association. However, the shareholders will normally not receive anything during the bankruptcy process unless it appears that the total proceeds from the realization of the assets are more than the total claims in the bankruptcy proceedings.	No, for the case of creditors. The shareholders may be classified by the company's article of association.	Yes. The creditors can be classified under the business reorganization plan. Under the Bankruptcy Act, the classification can be made as follows: (1) Each secured creditor with secured debt of no less than 50% of the total debts will be treated as one class. (2) Secured creditors not classified in (1) will be treated as one class. (3) Unsecured creditors can be classified in several classes. In the same class, the nature of claims must be essentially identical or similar. The shareholders may be classified by the company's article of association.
Is there a requirement for voting approvals by shareholders?	No.	Yes, for dissolution only.	No.

THAILAND

	Bankruptcy	Liquidation	Business reorganization
Is there a requirement for voting approvals by creditors?	Yes, only in case the debtor proposes a debt composition.	No.	Yes.
Is there an ability to bind minority dissenting creditors?	Yes, only in case the debtor proposes a debt composition.	No.	Yes.
COMMENCING THE PROCESS			
Who can commence?	Only creditors can commence. There are no provisions allowing voluntary bankruptcy under Thai law.	Shareholders of a debtor through the shareholders' resolution can commence.	Both creditors and debtors can commence.
Is shareholders' consent required to commence proceedings?	No.	Yes.	Not in general, except in cases where the articles of association of a debtor specify otherwise.
Is there an ability to consolidate group estates?	No.	No.	No.
Is there any court involvement?	Yes.	It depends on whether the total assets of the debtor can satisfy all debts. If yes, there will be no court involvement. If no, a liquidator has to apply for bankruptcy with the bankruptcy court.	Yes.
Who manages the debtor?	Once the absolute receivership order is granted by the bankruptcy court, the official receiver will take control and manage the debtor's assets and business.	The liquidator, who can be a director unless stipulated otherwise by the company's articles of association.	Once the bankruptcy court grants the business reorganization order and appoints the planner, the planner has managerial power to operate the debtor's business. The planner can be: (i) a licensed planner; (ii) the debtor; or (iii) a current director of the debtor. After the business reorganization plan is approved, the plan administrator takes control of and operates the debtor's business, and implements the plan.

THAILAND

	Bankruptcy	Liquidation	Business reorganization
What is the level of disclosure of the process to voting creditors?	The bankruptcy process will be announced to the public only after an absolute receivership order is issued. The official receiver is required to publish the absolute receivership order in the Royal Gazette and in one newspaper publication to urge all creditors to submit an application for debt repayment. The official receiver will notify all creditors who submitted an application for debt repayment of all the creditors' meetings in advance.	Not applicable.	The business reorganization process will be announced to the public through a newspaper publication once the bankruptcy court accepts the petition for further consideration. Moreover, the bankruptcy court will also send a notice informing of such petition to all creditors known to the debtor. If the bankruptcy court grants the business reorganization order, the official receiver will publish such order in the Royal Gazette and a newspaper publication, and will also send a notice to all creditors to urge them to file an application for debt repayment. The official receiver will notify all creditors who submitted an application for debt repayment of all the creditors' meetings and court hearings in advance. Once the business reorganization is implemented by the plan administrator, the plan administrator must file the quarterly report on the plan implementation to the official receiver.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Certain government authorities are excluded. If they are in financial difficulty, the Ministry of Finance has to determine an approach to resolve the said problem.	Liquidation only applies to a juristic person established under commercial laws.	Certain government authorities are excluded. If they are in financial difficulty, the Ministry of Finance has to determine an approach to resolve the said problem.
How long does it generally take a creditor to commence the procedure?	It takes six to 12 months from the date of filing to obtain the absolute receivership order, depending on the court's schedule and the debtor's defense.	It takes three to 12 months after the shareholders' resolution to dissolve a debtor, depending on the assets realization and the complications of the obligation owed to the creditors.	It takes six to 12 months from the date of filing to obtain the business reorganization order, depending on the court's schedule and the objection to the petition for the debtor's business reorganization, which the trial may require.
EFFECT OF PROCESS			
Does debtor remain in possession with continuation of incumbent management control?	No.	No.	No, except where the debtor itself is appointed as the planner, the incumbent management would still control the business and prepare the business reorganization plan under the supervision of the official receiver and the bankruptcy court.

THAILAND

	Bankruptcy	Liquidation	Business reorganization
What is the stay/moratorium regime (if any)?	There is no stay or moratorium regime during the trial period, whereby the court considers whether the absolute receivership order should be issued.	No.	Automatic stay will be in effect immediately when the court accepts the business reorganization petition for further consideration. The automatic stay will remain until the business reorganization process comes to an end by the court's order.
Can the procedure be used to implement a debt-to-equity swap?	Is there a provision for debtor-in-possession super priority financing?	No.	If the debt is incurred by the planner, the plan administrator or the official receiver, such debt will have priority over other unsecured creditors. However, such priority will not affect the right of a secured creditor to first receive the repayment of debt from the proceeds generated from the disposal of its secured assets.
Can the procedure be used to implement a debt-to-equity swap?	No.	No.	Yes, in accordance with the terms and conditions under the business reorganization plan approved by the bankruptcy court.
Are third-party releases available?	No.	No.	No.
Are the proceedings recognized abroad?	No.	No.	No.
Has the UNCITRAL Model Law been adopted?	No.	No.	No.
How long, complex and expensive is the process?	The timeframe, costs and complexity will vary on a case-by-case basis. Generally, a bankruptcy process takes around six to 12 months from the filing of the complaint to the issuance of an absolute receivership order. The process of collecting and realizing the assets, as well as the distribution of proceeds to the creditors, will vary upon the complexity, nature and value of the assets.	The entire process may take up to one year. This procedure is neither complex nor costly.	The timeframe, costs and complexity will vary on a case-by-case basis. Generally, the business organization proceedings would be more costly than bankruptcy proceedings since it involves several stages and parties. In general, a smooth business reorganization process will take approximately a year and a half in total, excluding the timeframe for plan implementation, which would normally take five years, subject to an extension.

THAILAND

	Bankruptcy	Liquidation	Business reorganization
Is there a mandatory set-off of mutual debts on insolvency?	It is not mandatory. The creditor is entitled to express its intention to set off the obligation owed to the debtor within its claim against the debtor if both were incurred before the absolute receivership is granted.	No.	It is the same as described in bankruptcy proceedings.
Can a debtor continue to carry on business during insolvency proceedings?	Once the absolute receivership order is issued, all business operations will cease. Exceptions will be made for any activity that is necessary to continue because of its nature for a smoother close-down. In such an exceptional case, the official receiver, upon the approval of the creditors at the creditors' meeting, can continue such an activity for the purpose of a smoother close-down or cessation.	No. The company is already dissolved, so there will be no business operation. The company is deemed to still be in existence only for the purpose of liquidation, not for usual operations.	The debtor can operate its business as long as it is a normal business operation. The business will be operated by a temporary administrator, a planner or a plan administrator depending on the stage of the case.
OTHER FACTORS			
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	The Bankruptcy Act criminalizes the incurring of debt, before an absolute receivership order is issued, that does not have reasonable ground to justify that it would be able to repay such debt.	No.	No.

THAILAND

	Bankruptcy	Liquidation	Business reorganization
What is the order of priority of claims?	Secured creditors will receive repayment no less than the value of its security and will have a right to receive the proceeds from the realization of secured assets (if any) before other creditors. For unsecured claims, the following sequence will be applied for the distribution of assets amongst creditors: (1) expenses incurred in the administration of the deceased debtor's estate (2) expenses incurred by the official receiver in the management of the debtor's property (3) expenses from the deceased debtor's funeral according to their financial status (4) fees for the collection of property (5) fees incurred by the plaintiff (the creditor) and lawyers' fees as determined by the court or the official receiver (6) taxes and duties due within six months prior to the absolute receivership order and money that employees are entitled to receive prior to the receivership order in return for the service performed for the employer (the debtor) in accordance with section 257 of the Civil and Commercial Code and the law on labor protection (7) other debts All unsecured claim are settled on a pro-rata basis.	The liquidator should settle all debts in full. Otherwise, the liquidation process will turn into a bankruptcy process.	Secured creditors will receive repayment no less than the value of its security and will have a right to receive the proceeds from the realization of secured assets (if any). Unsecured creditors will be repaid under the terms and conditions of the business reorganization plan and the priority scheme under the bankruptcy will also apply.
Are there any pension liabilities?	No.	No.	No.

THAILAND

	Bankruptcy	Liquidation	Business reorganization
Is it possible to challenge prior transactions?	Yes. Previous transactions can be challenged, as follows: (i) Preferential Transaction: Any transaction undertaken within three months before the filing of the business reorganization petition can be revoked if they place a creditor in a more advantageous position than other creditors (or so called "preferential transaction"). The period of three months can be extended to one year if a creditor receiving such preferential treatment is connected to the debtor, e.g., a director or a shareholder of the debtor. (ii) Fraudulent Transaction: Any transaction that the debtor undertakes with the knowledge that such an act will prejudice its creditors. This will not apply if the person enriched by such a transaction was not aware of the fact that, at the time the transaction took place, the transaction provided was prejudicial to the creditors. However, in case of a gratuitous transaction, the knowledge on the part of the debtor alone is sufficient. The revocation must be filed with the court within one year after the preferential transaction is known to the planner/ plan administrator, and in any event, no later than 10 years from the date of the transaction. (iii) Executory Contract: Within two months from the date of the court's order approving a reorganization plan, a plan administrator is entitled to refuse any rights under any transaction that would create more of a burden than interest for the debtor in pursuant to the plan.	No.	It is the same as described in bankruptcy proceedings.

THAILAND

	Bankruptcy	Liquidation	Business reorganization
COVID-19			
Is state support for distressed businesses available?	No.	No.	No.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	No.	No.	No.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	No.	No.	No.

UPDATED MAY 5, 2020

THE NETHERLANDS

THE NETHERLANDS

	Suspension of Payments ('Surseance van betaling')	Bankruptcy ('Faillissement')
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Yes, in principle security can be taken over all types of assets that are freely transferable (overdraagbaar), subject to statutory and contractual transfer restrictions. If assets cannot be freely transferred, they cannot be encumbered with a security interest. Parties can contractually limit the transfer of assets. Examples of a statutory limitation of transferability are assets used for public service or assets that are exempt from attachment (basic necessities of life (bed and linen, stock of food and drink), tools of a crafts, monies in a judicial third-party account). Articles 475a, 475b-475e, 447, 448, 642c of the Code of Civil Procedure.	In bankruptcy, the bankrupt estate cannot effectively encumber its assets with a security interest.

THE NETHERLANDS

	Suspension of Payments ('Surseance van betaling')	Bankruptcy ('Faillissement')
What is the nature of the process?	A court-ordered suspension of payments (SoP) aims to grant relief to a debtor facing temporary liquidity issues. The effect of the court-ordered SoP is that unsecured creditors without any preference cannot recover their claims against the debtor and attachments are lifted. Secured creditors are not affected by the SoP (unless a cooling-off period is ordered by the court). Preferred creditors are not affected either, unless their claims cannot be recovered from the assets that fall within the scope of the relevant preference. The court appoints an administrator (bewindvoerder), and only the administrator and the board of directors, jointly, can represent the debtor. The court-ordered SoP is preliminary at first, and may either become a final SoP (upon a favorable vote of the creditors) or be changed to a bankruptcy (if, in reality, the debtor does not have an opportunity to overcome the liquidity issues and is unable to pay its debts when they fall due). The debtor will negotiate an agreement with its unsecured creditors during the SoP. The creditors will then vote on the plan. After the vote, the debtor will ask the court to confirm the agreement/plan. Court confirmation may be sought if either (i) the creditors representing at least half of the total amount of admitted claims voted in favor, or (ii) if three-quarters of the creditors (with claims admitted by the administrator) that appeared at the meeting voted in favor of the composition, and if the rejection of the composition was the result of creditors voting against the composition on unreasonable grounds. The court will confirm the plan if the grounds for refusal, as set out in the Dutch Bankruptcy Act (DBA), do not apply and if it does not find other grounds for refusal. The court confirmed plan binds all creditors affected by it.	Bankruptcy is (primarily) aimed at the liquidation (sale) of the debtor's assets, followed by the distribution of the sale proceeds in accordance with the statutory distribution system. The test for bankruptcy is whether the debtor fails to make payments to its creditors when they fall due (i.e., a liquidity test). The court appoints a trustee in bankruptcy (curator) when the bankruptcy is declared. This trustee will work under the supervision of a supervisory judge. The trustee has the task to administer and liquidate the bankrupt estate. The company's directors are no longer authorized to represent the company to the extent that the company's assets are affected. The effect of the bankruptcy can best be described by making reference to the so-called "principle of fixation." The principle of fixation results in an automatic general arrest over the debtor's assets as of midnight of the day on which the bankruptcy was declared by the court. This implies that unsecured creditors can no longer enforce their claims but must submit these to the trustee in bankruptcy. The trustee in bankruptcy may either admit the claims or deny them. If the claims are denied, a creditor should initiate court proceedings to get their claim admitted. Attachments (beslagen) levied against the company will be considered lifted, as the bankruptcy itself is considered an (almost) all-encompassing attachment on the assets of the bankrupt company. In a bankruptcy scenario, as an alternative to liquidation, the debtor may make a (going concern) restart and a composition (binding only on unsecured creditors) is also explicitly allowed.
What is the solvency requirement?	The debtor expects that it will not be able to continue paying its (future) debts as they fall due. This should be a temporary issue for a business that is otherwise viable.	The test for bankruptcy is whether the debtor fails to make payments to its creditors when they fall due (i.e., a liquidity test).

THE NETHERLANDS

	Suspension of Payments ('Surseance van betaling')	Bankruptcy ('Faillissement')
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes, as the court needs to assess if the EU Insolvency Regulation (recast) applies (is COMI of the debtor located in a Member State except Denmark?). If that is the case, Dutch courts are competent: (i) if the COMI of the debtor is located in the Netherlands, the Dutch courts will then open "main proceedings" (ii) if the COMI is located in another Member State not being Denmark, Dutch courts may only open secondary insolvency proceedings Alternatively, if the EU Insolvency Regulation (recast) does not apply, Article 2 of the DBA includes the test for competence of the court. The Dutch court of the place of the statutory seat of the debtor is competent.	Yes, as the court needs to assess if the EU Insolvency Regulation (recast) applies (is COMI of the debtor located in a Member State except Denmark?). If that is the case, Dutch courts are competent: (i) if the COMI of the debtor is located in the Netherlands, the Dutch courts will then open "main proceedings" (ii) if the COMI is located in another Member State not being Denmark, Dutch courts may only open secondary insolvency proceedings Alternatively, if the EU Insolvency Regulation (recast) does not apply, Article 2 of the DBA includes the test for competence of the court. The Dutch court of the place of the statutory seat of the debtor is competent.
Is restructuring of both secured and unsecured claims possible?	The debtor may offer its unsecured and non-preferential creditors a composition in SoP. The court-confirmed plan binds all creditors affected by it.	The bankrupt estate may offer its joint creditors a composition. This is an alternative to the application of the statutory distribution system where the sales proceeds of all assets are to be distributed in accordance with the law. As a matter of principle, composition in bankruptcy is only binding upon unsecured creditors. However, preferred creditors may voluntarily participate as well, but they then need to give up the preference.
Is there a classification of creditors and shareholders?	SoP only affects unsecured creditors and creditors that do not have a right of preference.	In a bankruptcy, various classes of creditors can be identified, most notably: secured and unsecured creditors, preferred creditors with a statutory (e.g., tax and social security administrations) or non-statutory (e.g., retention of title, set-off, right to retain property) priority, estate creditors (having claims against the bankrupt estate that were incurred by the bankrupt estate). These are all 'absolute' positions (i.e., these positions have an effect towards everyone else). Dutch law also identifies one type of 'relative' position: subordination. Subordination under Dutch law creates an order of payment: certain claims have to be satisfied before the subordinated claim as per the terms of the subordination contract.

THE NETHERLANDS

	Suspension of Payments ('Surseance van betaling')	Bankruptcy ('Faillissement')
Is there a requirement for voting approvals by shareholders?	To file a petition for (preliminary) SoP, the board of directors of the debtor does not need the approval of the shareholders. Moreover, within the SoP procedure, there are two relevant votes: (i) to change the preliminary SoP into a final SoP and (ii) to vote on the composition itself. Vote on the final SoP For the final SoP to be declared, the voting requirements are: • at least two-thirds of all creditors present at the voting meeting that are affected by the SoP must vote in favor • these creditors that represent at least 75% of the total amount of admitted claims must vote in favor Vote on the composition If a majority of the admitted creditors, representing at least half of the total amount of the admitted claims, approves the composition, the composition may be submitted to the court for confirmation (homologatie). Court confirmation of the composition makes it also binding for dissenting creditors. However, if three-quarters of the admitted creditors voted in favor (that jointly own less than half of the admitted claims) and the vote of the other creditor(s) is deemed unreasonable in view of the recovery of their debt in a bankruptcy/ liquidation scenario, the court may still confirm the composition as if it were approved. There are no specific voting requirements for shareholders in the context of final SoP or composition.	To file a petition for bankruptcy, the board of directors must first receive an instruction from the general meeting of shareholders (unless the articles of association of the company stipulate otherwise). When voting on a composition in bankruptcy, the voting requirements are as follows. If a majority of the admitted creditors, representing at least half of the total amount of the admitted claims, approves the composition, the composition may be submitted to the court for confirmation (homologatie). Court confirmation of the composition makes it also binding for dissenting creditors. However, if three-quarters of the admitted creditors voted in favor (that jointly own less than half of the admitted claims) then the vote of the other creditor(s) is deemed unreasonable in view of the recovery of their debts in a liquidation scenario. There are no specific voting requirements for shareholders.
Is there a requirement for voting approvals by shareholders creditors?	Shareholders may participate in the voting if they are unsecured creditors without a right of preference.	Yes, by a court confirmation (homologatie) of the composition in bankruptcy. If a majority of the admitted creditors, representing at least half of the total amount of the admitted claims, approves the composition, the composition may be submitted to the court for confirmation. Court confirmation of the composition makes it also binding for dissenting creditors. However, if three-quarters of the admitted creditors voted in favor (that jointly own less than half of the admitted claims) and the vote of the other creditor(s) is deemed unreasonable in view of the recovery of their debt in a liquidation scenario, the court may still confirm the composition as if it were approved.

THE NETHERLANDS

	Suspension of Payments ('Surseance van betaling')	Bankruptcy ('Faillissement')
Is there an ability to bind minority dissenting creditors?	Yes, by a court confirmation (homologatie) of the composition in SoP. If a majority of the admitted creditors, representing at least half of the total amount of the admitted claims, approves the composition, the composition may be submitted to the court for confirmation. Court confirmation of the composition makes it also binding for dissenting creditors. However, if three-quarters of the admitted creditors voted in favor (that jointly own less than half of the admitted claims) and the vote of the other creditor(s) is deemed unreasonable in view of the recovery of their debt in a bankruptcy/ liquidation scenario, the court may still confirm the composition as if it were approved.	Yes, by a court confirmation (homologatie) of the composition in bankruptcy. If a majority of the admitted creditors, representing at least half of the total amount of the admitted claims, approves the composition, the composition may be submitted to the court for confirmation. Court confirmation of the composition makes it also binding for dissenting creditors. However, if three-quarters of the admitted creditors voted in favor (that jointly own less than half of the admitted claims) and the vote of the other creditor(s) is deemed unreasonable in view of the recovery of their debt in a liquidation scenario, the court may still confirm the composition as if it were approved.
COMMENCING THE PROCESS		
Who can commence?	The board of directors.	The board of directors or a creditor.
Is shareholder's consent required to commence proceeding?	No.	Shareholders' consent is required in case the debtor files for its own bankruptcy (unless the company's articles of association stipulate that such shareholders' consent is not required).
Is there an ability to consolidate group estates?	No.	No. As a matter of principle, only individual companies are declared bankrupt. However, in practice, if subsidiaries of the debtor are declared bankrupt as well, often the same trustee in the bankruptcy is appointed and the same supervisory judge.
Is there any court involvement?	Yes, to grant preliminary SoP, then to organize a hearing/vote on the final SoP, and then to confirm the composition.	Yes, to declare the debtor bankrupt (and appoint a trustee in bankruptcy and a supervisory judge), and then, mostly, through the supervisory judge. In case of composition in bankruptcy, the court organizes a hearing/vote and confirms the composition.
Who manages the debtor?	The administrator and the board of directors jointly.	The trustee in bankruptcy represents the bankrupt estate. The board of directors can no longer represent the bankrupt estate if the assets are affected (i.e., the board of directors can, for example, vote in the general meeting of a subsidiary still notwithstanding the bankruptcy of the parent company).

THE NETHERLANDS

	Suspension of Payments ('Surseance van betaling')	Bankruptcy ('Faillissement')
What is level of disclosure of process to voting creditors?	The Dutch Bankruptcy Act does not include rules regarding the contents of the draft composition. However, there are grounds for mandatory refusal of the composition that the court must apply when confirmation of the composition is sought (which is required to bind dissenting creditors). Amongst these grounds for refusal are rules obliging a court to compare the assets of the debtor and the total costs of the composition (if the assets exceed the total costs of the composition, it shall be refused), if the fulfilment of the debtor's obligations under the composition is not sufficiently certain, or if the composition includes improper incentives for certain creditors. Moreover, courts may inter alia refuse to confirm a composition for example if it does not contain sufficient information on the circumstances that led to the composition. These grounds for refusal should at a minimum lead to a composition that provides sufficient financial information about the assets of the debtor and the costs of the composition, about the incentives for the creditors to agree with the composition, about the circumstances that led to the composition and about the degree of certainty (and by what measures) the creditors have to get paid.	The Dutch Bankruptcy Act does not include rules regarding the contents of the draft composition. However, there are grounds for mandatory refusal of the composition that the court must apply when confirmation of the composition is sought (which is required to bind dissenting creditors). Amongst these grounds for refusal are rules obliging a court to compare the assets of the bankrupt estate and the total costs of the composition (if the assets exceed the total costs of the composition, it shall be refused), if the fulfilment of the bankrupt estate's obligations under the composition is not sufficiently certain, or if the composition includes improper incentives for certain creditors. Moreover, courts may inter alia refuse to confirm a composition for example if it does not contain sufficient information on the circumstances that led to the composition. These grounds for refusal should at a minimum lead to a composition that provides sufficient financial information about the assets of the bankrupt estate and the costs of the composition, about the incentives for the creditors to agree with the composition, about the circumstances that led to the composition and about the degree of certainty (and by what measures) the creditors have to get paid.
What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?	There is a specific regime in the DBA for financial institutions and insurance companies; they are excluded from the SoP regime.	There is a specific regime in the DBA for financial institutions and insurance companies. Moreover, non-public partnerships (niet openbare maatschappen) are excluded.
How long does it generally take for a creditor to commence the procedure?	Creditors may not file for their debtor's SoP; only the debtor can file a petition for (preliminary) SoP.	Creditors can commence bankruptcy proceedings by filling out a form and submitting this with the competent court.
EFFECT OF PROCESS		
Does debtor remain in possession with continuation of incumbent management control?	The debtor's board of directors can bind the company by acting jointly with the court appointed administrator.	The trustee in bankruptcy is exclusively authorized to dispose of the bankrupt estate's assets.
What is the stay/moratorium regime (if any)?	The (preliminary) SoP effectively puts in place a stay for all unsecured creditors.	The bankruptcy creates a general moratorium for both unsecured and preferred creditors. Only secured creditors may act as if there was no bankruptcy.

THE NETHERLANDS

	Suspension of Payments ('Surseance van betaling')	Bankruptcy ('Faillissement')
Is there a provision for debtor in possession super priority financing?	No, Dutch law does not include a provision for DIP super-priority financing in SoP.	No, Dutch law does not include a provision for DIP super-priority financing in bankruptcy.
Can procedure be used to implement debt-to-equity swap?	No, as shareholders are not bound by the SoP (and they need to decide on issuing the required new shares).	No.
Are third party releases available?	No.	No.
Are the proceedings recognised abroad?	Yes, under the regime of the EU Insolvency Regulation.	Yes, under the regime of the EU Insolvency Regulation.
Has the UNCITRAL Model Law been adopted?	No.	No.
How long, complex and expensive is the process?	The final SoP is declared for a maximum period of 1.5 years (this period can then be extended for another period of 1.5 years). The procedure is not very expensive nor is it very complex.	Generally, bankruptcy lasts up to three years. The procedure is not very expensive nor is it very complex.
Is there a mandatory set-off of mutual debts on insolvency?	No.	No.
Can a debtor continue to carry on business during insolvency proceedings?	Yes, but the debtor can only be represented by the board of directors and the court-appointed administrator jointly.	Yes, but only if the trustee in bankruptcy thinks a restart (going concern) is feasible.
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	N/A. There should be a prospect of the company's survival if the burden of debt is restructured; assuming this is the case, there is no specific liability risk for directors to continue the business.	Directors may be held personally liable for acting unlawfully if: (i) they make selective payments (this is only allowed if there is a realistic perspective of survival for which making the selective payment is required, and if not, all (unsecured) creditors should be treated equally) (ii) they are entering into new obligations on behalf of the company knowing (or when the director reasonable should have known) that the company cannot fulfil its obligations and offers no recourse for damages suffered as a consequence thereof

	Suspension of Payments ('Surseance van betaling')	Bankruptcy ('Faillissement')
		(iii) distributions are made when the company cannot pay its debts as they fall due (taking a perspective of looking one year ahead), the distribution may be unlawful and lead to liability of both shareholder(s) and director(s) (toward the company) Moreover, when: (iv) following the bankruptcy, directors (and de facto or shadow directors) may be held liable for manifestly improper management that was an important cause of the bankruptcy (v) under certain circumstances, Dutch law provides that directors may be held personally liable by authorities and institutions for the BV's non-payment of certain taxes, social security contributions and pension premiums if the BV has not duly notified the relevant authority/institution of its inability to pay, or if the non-payment was caused by the culpable manifestly improper performance of duties by the directors
What is the order of priority of claims?	N/A	1. secured creditors (with a mortgage (recht van hypotheek), or a pledge (pandrecht)) 2. estate creditors (boedelcrediteuren) (having claims against the bankrupt estate that were incurred by the bankrupt estate) 3. preferred creditors with a statutory (e.g., tax and social security administrations) or non-statutory (e.g., retention of title, set off, right to retain property) priority 4. unsecured/non-preferred creditors
Are there any pension liabilities?	N/A	For certain types of pension funds (bedrijfstakpensioenfondsen), there is an obligation to notify if the company is unable to pay its pension debts when they fall due. Failing to properly notify the pension fund leads to a personal liability risk for the director(s).

THE NETHERLANDS

	Suspension of Payments ('Surseance van betaling')	Bankruptcy ('Faillissement')
Is it possible to challenge prior transactions?	Under Dutch law, it is possible outside of bankruptcy to challenge transactions that were prejudicial to one or more creditors. This is referred to as actio pauliana. Actio pauliana has been accepted by Dutch courts under various circumstances, e.g., in cases of payment of debts, set-off, granting of security rights and even in case of distribution of dividends. The case law is extensive and at times complex. In order for the actio pauliana to apply: • the legal act must be **non-obligatory** (not mandatory by law or contract) • the legal act must have prejudiced the creditors (in bankruptcy the combined creditors; outside of bankruptcy one or more creditors) • if the legal act was performed in exchange for consideration, the creditor/trustee must prove that both the debtor and the other party knew that the act would prejudice the creditor at the time the legal act was performed • if no consideration was concerned (e.g., a donation or payment well below the actual value), the creditor must only prove that the debtor knew they acted to the detriment of creditors in order for the actio pauliana to be accepted at the time the legal act was performed.	Under Dutch law, it is possible in bankruptcy for the trustee to challenge transactions that were prejudicial to one or more creditors. This is referred to as actio pauliana. Actio pauliana has been accepted by Dutch courts under various circumstances, e.g., in cases of payment of debts, set-off, granting of security rights and even in case of distribution of dividends. In order for actio pauliana to apply: • the legal act must be **non-obligatory** (not mandatory by law or contract) • the legal act must have prejudiced the creditors (in bankruptcy the combined creditors; outside of bankruptcy one or more creditors) • if the legal act was performed in exchange for consideration, the creditor/trustee must prove that both the debtor and the other party knew that the act would prejudice the creditor at the time the legal act was performed • if no consideration was concerned (e.g. a donation or payment well below the actual value), the creditor/trustee must only prove that the debtor knew they acted to the detriment of creditors in order for actio pauliana to be accepted at the time the legal act was performed

THE NETHERLANDS

Suspension of Payments ('Surseance van betaling')

Third parties may, under certain circumstances, remain unaffected by the actio pauliana if they acted in good faith and — if there was no consideration for the legal act — if the third party did not benefit in any way from the legal act at the time pauliana was invoked (outside of bankruptcy).

The knowledge that a legal act would prejudice the debtor's creditors is presumed by law outside of bankruptcy: for all transactions that occurred within one year of invoking actio pauliana, when it can also be established that the transaction meets the criteria of one of the following categories:

- transactions in which the debtor received substantially less than the value that was given by the debtor
- payment of, or granting of security for, debts which are not yet due
- transactions entered into by the debtor-natural person with certain relatives
- transactions entered into by the debtor-corporation with its managing or supervisory director(s) or relatives to these directors or shareholders
- transactions by the debtor-corporation with another legal entity, provided that one of the involved entities is a director of the other, or that there are certain family ties between either the director-natural persons or the shareholder-natural persons of the involved entities
- transactions by the debtor-corporation with a subsidiary or affiliate company

Note, that prejudice of the creditors may also be presumed to exist even if the balance sheet of the debtor remains practically unaffected.

The presumption of knowledge may be overcome by the debtor or other party by providing evidence to the contrary.

Bankruptcy ('Faillissement')

Third parties may, under certain circumstances, remain unaffected by the actio pauliana if they acted in good faith and — if there was no consideration for the legal act — if the bankruptcy was adjudicated.

The knowledge that a legal act would prejudice the debtor's creditors is presumed by law for all transactions performed in case of bankruptcy: within one year of an adjudication of bankruptcy, when it can also be established that the transaction meets the criteria of one of the following categories:

- transactions in which the debtor received substantially less than the value that was given by the debtor
- payment of, or granting of security for, debts which are not yet due
- transactions entered into by the debtor-natural person with certain relatives
- transactions entered into by the debtor-corporation with its managing or supervisory director(s) or relatives to these directors or shareholders
- transactions by the debtor-corporation with another legal entity, provided that one of the involved entities is a director of the other, or that there are certain family ties between either the director-natural persons or the shareholder-natural persons of the involved entities
- transactions by the debtor-corporation with a subsidiary or affiliate company

Note, that prejudice of the creditors may also be presumed to exist even if the balance sheet of the bankrupt estate remains practically unaffected.

The presumption of knowledge may be overcome by the debtor or other party by providing evidence to the contrary.

In bankruptcy, a debtor under a legal obligation (i.e., an **act that is mandatory by law or by contract**) to pay a certain creditor may still be confronted with actio pauliana, if it is demonstrated by the trustee that the other party knew that a petition for bankruptcy was actually filed at the time of payment, or if it is demonstrated that the legal act is a result of conspiracy between the debtor and the other party to defraud creditors. Once demonstrated, evidence to the contrary is no longer allowed.

THE NETHERLANDS

	Suspension of Payments ('Surseance van betaling')	Bankruptcy ('Faillissement')
COVID-19		
Is state support for distressed businesses available?	Oustide the context of SoP or bankruptcy specifically, but in connection with COVID-19, the Dutch government issued a package of measures to aid businesses financially: • the Tijdelijke Noodmaatregel Overbrugging Werkgelegenheid (NOW) to provide support to employers; • a one-time reimbursement for economic loss due to COVID 19 of EUR 4,000 (Tegemoetkoming Ondernemers Getroffen Sectoren, TOGS) (https://english.rvo.nl/subsidies-programmes/reimbursement-economic-loss-due-covid-19) • the Tijdelijke overbruggingsregeling zelfstandig ondernemers (TOZO) (state support to independent entrepreneurs) • the Garantie Ondernemersfinanciering (GO-C) (state acts as guarantor for certain loans) • the Borgstelling MKB Kredieten (state acts as guarantor for certain loans of SMEs) • the Corona OverbruggingsLening voor Start-ups and Scale-ups (loan facilities for start-ups and scale-ups) • Qredits (microfinancing) • aid package for businesses in the agricultural, horticultural and fisheries sectors	N/A
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	No general restrictions on creditor actions were introduced in connection with COVID-19. There is a set of tax measures to aid businesses in connection with financial distress due to COVID-19 (https://www.belastingdienst.nl/wps/wcm/connect/nl/ondernemers/content/coronavirus-belastingmaatregelen-om-ondernemers-te-helpen)	No.

UPDATED MAY 6, 2020

THE NETHERLANDS

	Suspension of Payments ('Surseance van betaling')	Bankruptcy ('Faillissement')
Is further reform of the insolvency regime being discussed/anticipated? If so, give details.	Yes, the Dutch Scheme of Arrangement (Wet Homologatie Onderhands Akkoord) is expected to be introduced shortly (by 1 July 2020). The draft legislation is currently being finalized by parliament. The Dutch Scheme of Arrangement is set up to combine the best of both the UK scheme and US Chapter 11 procedures. It is very flexible and cost efficient and requires limited court involvement. It is meant to allow debt restructuring for businesses that are otherwise viable outside of bankruptcy, also binding dissenting (classes of) creditors.	

TURKEY

TURKEY	Financial restructuring under the Framework Agreement	Concordat/composition (Turkish scheme of arrangement)
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Yes.	
What is the nature of the process?	Essentially, a contractual process binding on banks that signed the Framework Agreement (FA) produced by the Turkish Banks Association and debtors that separately apply to enter the process.	The Execution and Bankruptcy Code No. 2004 (EBC) process is used for solvent or insolvent restructurings.
What is the solvency requirement?	Available for insolvent entities or those likely to become insolvent. Not available if the debtor has entered into bankruptcy proceedings. Not available if creditors with more than 25% of aggregate claims have begun legal proceedings against the debtor.	Available for an insolvent company unable to pay due debts or unlikely to pay debts upon maturity. Creditors in a position to file for bankruptcy may also file for composition.
Is there a requirement to demonstrate COMI ("centre of main interests")?	This procedure is only available for Turkish debtors. Furthermore, Turkish banks, financial leasing companies, finance companies, factoring companies, capital markets institutions, insurance and reinsurance companies, payment services and e-money institutions, and system operators cannot benefit from the FA as debtors.	This procedure is only available for Turkish debtors.
Is restructuring of both secured and unsecured claims possible?	Not a restructuring procedure to the extent that debt cannot be written off without 100% creditor consent. Similarly, security rights cannot be impaired without individual secured creditor consent. There is the ability to change other terms of debt (unsecured and secured) with stipulated majority consent across the relevant creditor group.	Yes. However, the provisions of the concordat process are different with respect to secured and unsecured creditors. For example, the debtor can negotiate and conclude a separate restructuring deal with its secured creditors.

TURKEY

	Financial restructuring under the Framework Agreement	Concordat/composition (Turkish scheme of arrangement)
Is there a classification of creditors and shareholders?	No.	Secured and unsecured creditors are separately classified.
Is there a requirement for voting approvals by shareholders?	No, unless the articles of association require this.	No, unless the articles of association require this.
Is there a requirement for voting approvals by shareholders creditors?	Approval of two-thirds by value of the creditors in the creditor institutions consortium (CIC) (i.e., Turkish bank/financial institution creditors and foreign credit institutions and international organizations) that signed the FA and that have exposure to a debtor required to approve a specific restructuring agreement for a particular debtor, and most other decisions. Foreign credit institutions and international organizations authorized to extend credits to debtors under the laws of their home jurisdiction ("**Foreign Credit Institutions and International Organizations**") can join the financial restructuring process by signing the FA on a case-by-case basis without being subject to the CIC's approval. 75% by volume and 30% by number to approve the accession of third-party creditors that have not signed up to the FA, to approve the borrower's borrowing from those willing to lend and/or extend the duration of negotiations to 150 days. Write down of debt requires 100% approval. 90% by volume and two by number for additional lending.	Approval of the composition plan by creditors requires the affirmative vote of: (i) half in number of the registered creditors who own a minimum of 50% by value of the claims subject to the composition plan (ii) one-fourth of the registered creditors who own two-thirds of the claims subject to the composition plan The voting right is only available for creditors affected by the composition project.
Is there an ability to bind minority dissenting creditors?	Per the voting majorities above, there is no ability to bind dissenting creditors to any write off. Per the voting majorities above, there is limited ability to bind dissenting creditors for additional lending. Two-thirds by value majority in relation to other matters will bind dissenting creditors who are signatories of the FA. Will not bind non-signatories.	Dissenting creditors may be bound by the terms of the plan subject to requisite majority approvals.

TURKEY

	Financial restructuring under the Framework Agreement	Concordat/composition (Turkish scheme of arrangement)
COMMENCING THE PROCESS		
Who can commence?	Debtor — see "Is there an ability to bind minority dissenting creditors?".	The company's board of directors may commence voluntary proceedings at any time. Creditors in a position to file for bankruptcy of the debtors may commence involuntary proceedings.
Is shareholder's consent required to commence proceeding?	No, unless the articles of association require this.	No, unless the articles of association require this.
Is there an ability to consolidate group estates?	No.	No.
Is there any court involvement?	No. Under the FA, an arbitral committee is created to resolve disputes arising from the failure of creditors to perform obligations under the FA. This does not appear to extend to creditors failing to perform obligations arising under any financial restructuring contract (FRC) struck with a particular debtor.	Composition proceedings are overseen by the competent commercial court of first instance. The court also appoints a composition commissary whose scope of duties is decided by the court.
Who manages the debtor?	The debtor continues to manage its affairs but, subject to the terms of an undertaking, it is obliged to provide an undertaking to commence the process, which limits its ability to do certain things, e.g., dispose of assets and grant security.	Concordat officers/commissary (konkordato komiseri) manages the debtor. The scope of their duties and authorizations is determined by the court on a case-by-case basis.
What is level of disclosure of process to voting creditors?	The FA specifies that any FRC entered into should legislate for information flows from the debtor to the creditor. Furthermore, with its application for restructuring, the debtor undertakes to provide financial and other information about its affairs and the other members of its group. Without prejudice to the provisions of Banking Law No. 5411 and Personal Data Protection Law No. 6698, the bank to which the debtor sends its application, and the leader bank, if appointed, may provide information to the Foreign Credit Institutions and International Organizations regarding the debtor's financial restructuring process pursuant to their written requests.	The concordat officers must provide adequate information about the debtor's financial affairs to allow creditors to make an informed decision when voting on the plan. In practice, concordat officers prepare and submit financial reports regarding the financial status of the debtors so that the creditors and the court itself closely monitor the company's financial ability to comply with the concordat plan.

TURKEY

	Financial restructuring under the Framework Agreement	Concordat/composition (Turkish scheme of arrangement)
What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?	Turkish debtors with at least TRY 100 million of financial indebtedness are eligible for financial restructuring. Turkish banks, financial leasing companies, finance companies, factoring companies, capital markets institutions, insurance and reinsurance companies, payment services and e-money institutions, and system operators are also excluded from the FA as debtors. Excluded debtors can apply for composition or bankruptcy in accordance with the EBC.	All legal and real persons can apply for composition. All composition proceedings are subject to the EBC.
How long does it generally take for a creditor to commence the procedure?	Not long, the procedure automatically commences once the borrower applies to the lead bank with the required application documents.	Not very long, no prescribed period is available.
EFFECT OF PROCESS		
Does debtor remain in possession with continuation of incumbent management control?	See "Who manages the debtor?".	The debtor may continue its regular activities under the supervision of the commissary. However, the court may require that the debtor obtain the commissary's approval for specific transactions or place the commissary directly in charge of the management of the debtor's commercial activities.

TURKEY

	Financial restructuring under the Framework Agreement	Concordat/composition (Turkish scheme of arrangement)
What is the stay/moratorium regime (if any)?	Subject to the exceptions mentioned in "Is there a requirement for voting approvals by shareholders' creditors?" Additionally, the stay will only continue for 90 days unless extended by the CIC (75% by value and 30% by number approval). The moratorium will fall away if an FRC is not signed.	During the initial and definitive grace period, the following applies: • No enforcement proceedings can be initiated or continued and no interim attachment and injunction decisions can be exercised, including the enforcement proceedings for public receivables. • The period of prescriptions and statute of limitations that can normally be halted due to the enforcement proceedings will be suspended. • Unsecured receivables will not accrue interest unless the composition plan states otherwise. • Should an assignment agreement for future receivables be executed between the debtor and the third party before the definitive period and if the receivables subject to this agreement arise thereafter, the assignment agreement will be deemed invalid. • Creditors secured with pledge may initiate or continue debt enforcement proceedings but cannot obtain any dispositive measure against the debtor or realize the sale of the pledged assets. • If a contract bearing importance in the debtor's commercial activities provides that the composition application would be deemed a violation of the contract, would be considered a just cause for termination or would accelerate the debts, such provisions would not be enforceable. In other words, agreements cannot be terminated based on the composition application, even when the agreement allows. • The debtor may terminate a continuous contractual relationship that impedes the composition project upon the approval of the commissary and the court. • The debtor may continue its regular activities under the supervision of the commissary. However, the court may require that the debtor obtain the commissary's approval for specific transactions or place the commissary directly in charge of the management of the debtor's commercial activities. • The debtor cannot establish pledges over its assets; provide suretyships; transfer its immovable properties or necessary assets for its operations; and/or establish any collateral over those assets without the court's permission. If the debtor violates this article, any transaction made would be deemed void.

TURKEY	Financial restructuring under the Framework Agreement	Concordat/composition (Turkish scheme of arrangement)
Is there a provision for debtor in possession super priority financing?	Yes, to the extent of the security granted over previously unencumbered assets. No priming security is permitted without the consent of the preexisting secured creditor whose rights would be affected.	No.
Can procedure be used to implement debt-to-equity swap?	Yes, this is one of the actions that may be taken by the creditors as part of restructuring.	No.
Are third party releases available?	Yes, subject to the limits set out in "Is there a requirement for voting approvals by shareholders' creditors?".	No.
Are the proceedings recognised abroad?	This is highly questionable, as it does not operate as collective insolvency proceedings subject to the supervision of a court.	No.
Has the UNCITRAL Model Law been adopted?	No.	No.
How long, complex and expensive is the process?	A maximum of 180 days to conclude an FRC implementation. There is no time limit on how long implementation might take. Costs are less than a concordat.	It is very time-consuming and expensive as a formal court application. Essentially, there are four main stages of the composition proceedings: • preparations for the composition application (approximately two to four weeks in practice) • initial temporary period (three to five months) • definitive period (12 months to 18 months) • composition payment plan (may be several years, and depends on the negotiations with the creditors and the agreed payment plan) Costs are material.

TURKEY	Financial restructuring under the Framework Agreement	Concordat/composition (Turkish scheme of arrangement)
Is there a mandatory set-off of mutual debts on insolvency?	No mandatory set-off, but voluntary set-off is possible.	N/A In composition, set-off is discretionary and it is subject to the set-off provisions of bankruptcy. As per the EBC, in the following situations a set-off of mutual debts is **not** possible: • if the creditor has become a creditor **after** the temporary period • if the person in debt to the debtor who requested composition has become in debt **after** the temporary period • if the creditor's receivables are based on a bearer share • the debtor being a joint-stock company, a limited liability company or a cooperative; if the shareholders have not fully paid their capital commitments, they cannot set off their receivables with their debts If the debtor makes a set-off that harms the other creditors, this set-off may be objected to in court.
Can a debtor continue to carry on business during insolvency proceedings?	As the FA contemplates "debtor-in-possession" proceedings, the debtor continues to carry on its business. It is, however, subject to the terms of an undertaking it is obliged to provide to commence to the process, which limits its ability to take certain actions, e.g., dispose of assets and grant security.	See "Does the debtor remain in possession with continuation of incumbent management control?".
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Wrongful trading directors may be held liable.	Wrongful trading directors may be held liable.

TURKEY	Financial restructuring under the Framework Agreement	Concordat/composition (Turkish scheme of arrangement)
What is the order of priority of claims?	The EBC prioritizes claims as follows: • Secured creditors have priority in respect of collecting the proceeds of the sale of the secured assets, which in principle will be sold by the bankruptcy administration as soon as possible. • Unsecured creditors will be paid in the following order: • taxes and other government charges accrued in connection with the asset to be sold • employee or labor pension-related claims and alimonies • claims of third parties whose assets are managed by the debtor under a custody or guardianship • claims prioritized under various laws • other unsecured claims	As composition is a restructuring of debts and not a liquidation process, there is no priority of certain claims over others. Without prejudice to the difference between the secured and unsecured receivables, all claims are treated equally and they are paid in accordance with the composition project.
Are there any pension liabilities?	N/A	N/A
Is it possible to challenge prior transactions?	The FA does not refer to any voidable transactions. However, under the EBC, the following transactions executed by the debtor can be annulled: (i) transactions executed within the two years prior to bankruptcy made for no consideration, such as donations, or for a consideration significantly less than the obligation of the bankrupt (ii) transactions concluded within five years prior to the bankruptcy with an intent to damage the creditors (iii) the following transactions concluded within the year prior to the bankruptcy: • pledges given by the debtor as security for a legal and valid debt other than security previously granted by the debtor • payments made other than with money and other common payment instruments • payments for an executory obligation • annotations made on title deeds for the benefit of third parties	N/A

TURKEY

	Financial restructuring under the Framework Agreement	Concordat/composition (Turkish scheme of arrangement)
COVID-19		
Is state support for distressed businesses available?		The Turkish government enacted a law stipulating that no enforcement proceedings will be initiated and no interim attachments will be exercised until 15 June 2020, which may be interpreted as state support for distressed businesses.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?		Yes. The Turkish government enacted a law stipulating that no enforcement proceedings will be initiated until 15 June 2020, which is a restriction on creditors' actions. The law further stipulates that the composition's normal effects on debtors and creditors will continue during this period without any changes. Therefore, while there are some restrictions on creditors' actions, the distressed companies will still enjoy the composition's effects in favor of them.
Is further reform of the insolvency regime being discussed/anticipated? If so, give details.	No.	No.

UPDATED MAY 7, 2020

UKRAINE

UKRAINE

Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation

Can you take security over all types of assets, including working capital?

Generally, yes.

Security may be applied by the court at its own initiative or at the request of the creditors(s), debtor or other participants to the proceedings. If the debtor is subject to the bankruptcy proceedings, the security over its assets may be applied only within such proceedings.

The security may foresee prohibition for the debtor to enter certain transactions without approval from the assets manager/liquidator, e.g., prohibition to dispose of real estate assets or securities without the approval of the assets manager/liquidator or the court, custodial arrangements for certain debtor's assets, etc.

The security remains effective until the solvency renewal stage or liquidation stage of the bankruptcy proceedings or until the proceedings are closed.

At the solvency renewal stage of the bankruptcy proceedings, the arrest may be applied over the debtor's assets, except for the funds kept on escrow accounts. In case the arrest prevents due performance of the solvency renewal plan or restoration of the debtor's solvency, it may be cancelled by the court upon request of the solvency renewal manager.

UKRAINE

What is the nature of the process?	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation
	The pre-trial solvency renewal stage is a procedure in relation to a debtor prior to the commencement of the bankruptcy proceedings in court and is aimed at avoiding the trial by way of satisfaction of the existing and potential claims of the debtor's creditors and restoration of the debtor's solvency. The pre-trial solvency renewal procedure is applied through the pre-trial solvency renewal plan, approved by the creditors and the court. While the court considers the plan, the moratorium prohibiting satisfaction of all creditors' claims is applied. The moratorium is cancelled once the plan is approved by the court. The pre-trial solvency renewal plan shall determine the amount, procedure and terms of satisfaction of the creditors' claims, as well as the authority of the solvency renewal manager (if appointed according to the plan). The plan shall be accompanied by a liquidation analysis proving preference of the pre-trial solvency renewal procedure over the liquidation procedure. Claims of the first and the second orders of priority of satisfaction of claims (see below for more details) may not be covered by the pre-trial solvency renewal plan.	The assets management stage is the initial stage of the court bankruptcy proceedings. The stage is aimed at identifying the debtor's creditors having due debts or those with pending claims, analyzing the financial standing of the debtor and identifying the existent debtor's assets. The stage also includes several preparatory actions that are taken before the proceedings move to the next stage. Namely, at this stage the court: (1) appoints the assets manager, who conducts supervision over the debtor's activity and the assets, analyses the financial standing of the debtor; and (2) arranges the initial the general meeting of the creditors for establishing the creditors' committee, which will decide on further conduct of the bankruptcy proceedings. The stage ends with the court decision on moving to the next stage of the proceedings, i.e., solvency renewal or liquidation. As a rule, the duration of the assets management stage should not exceed 170 calendar days and should not be further extended. In practice, it is often delayed in view of procedural challenges on part of the debtor or creditors.	The solvency renewal stage of the bankruptcy proceedings is aimed at restoration of the debtor's solvency by way of debt restructuring. The stage may be introduced by the court as the next stage of the bankruptcy proceedings after the assets management stage, upon approval of the solvency renewal plan by the creditors and the court. The solvency renewal plan may include corporate restructuring of the debtor, sale of its assets, recovery of receivables, debt restructuring, asset restructuring, sale or cancellation of debt and other means of renewal of the debtor's solvency, etc. Failure to approve the solvency renewal plan and/or to perform the plan should lead to the introduction of the liquidation stage.	The liquidation stage of the bankruptcy proceedings is introduced by the court for the purpose of satisfaction of the creditors' claims on account of the cash proceeds from the sale of the debtor's assets, including through selling the debtor's assets at auction. The stage may be introduced either after the assets management stage (if no solvency renewal plan is approved) or after the solvency renewal stage, if the debtor failed to restore its solvency upon completion of the solvency renewal plan. At the liquidation stage, the court appoints a liquidator, who acts as the head of the debtor. The liquidator must identify the debtor's assets, determine their liquidation value, sell these assets and pay off the debt to the creditors in accordance with the order of priority for satisfaction of the creditors' claims as established by law (please see below for more details). Upon completion of the liquidation stage, the liquidator prepares a report, as well as the liquidation balance sheet, and submits them to the court for consideration and approval. Based on the results of the liquidation stage, the court may approve the report and the liquidation balance sheet, terminate the debtor or close the bankruptcy proceedings. The term of liquidation proceedings is 12 months from the day of commencement.

UKRAINE

	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation
What is the solvency requirement?	There is no specific requirement for this stage. General insolvency (i.e., inability to pay off the creditors' claims because of existing funds and assets) is discovered by the debtor, who initiates the proceedings.	It is available for insolvent entities or those likely to become insolvent; no threshold is set up. Where the bankruptcy proceedings is initiated by the debtor itself, it shall prove the threat of becoming insolvent (e.g., insufficiency of funds and assets to pay off the claims of existing creditors). Once the debtor discovers its potential insolvency (threat of insolvency), it should apply to the court for commencement of the bankruptcy proceedings within one month. Where the bankruptcy proceedings are initiated by the creditor, its claims should be indisputable (i.e., confirmed by the effective court decision, recognized by the debtor etc.)		
Is there a requirement to demonstrate COMI ("centre of main interests")?	No. Domiciled debtors (i.e., legal entities incorporated in Ukraine) can be subject to the proceedings.			
Is restructuring of both secured and unsecured claims possible?	Yes. The procedure shall be set forth by the pre-trial solvency renewal plan. Where the pre-trial solvency renewal plan includes claims of secured creditors, specific rules of approval of such plan by the secured creditors are applied to provide additional guarantees to such creditors.	No restructuring is possible at this stage.	Yes. The procedure shall be specifically set forth by the solvency renewal plan. Where the pre-trial solvency renewal plan includes claims of secured creditors, specific rules of approval of such plan by the secured creditors are applied to provide additional guarantees to such creditors.	No restructuring is possible at this stage.
Is there a classification of creditors and shareholders?	There are 3 types of creditors: (1) secured creditors (those with claims being secured in full or in part; if the claims are secured in part, they are deemed to be secured in the relevant part) (2) competitive creditors (those with claims, which became due before the commencement of the bankruptcy proceedings) (3) current creditors (those with claims which became due after the initiation of the bankruptcy proceedings)			
Is there a requirement for voting approvals by shareholders?	Generally, no. Where the pre-trial solvency renewal proceedings are commenced or where the bankruptcy proceedings are commenced at the initiative of the debtor, the approval from its founders, participants or shareholders is required subject to specific rules foreseen by the debtor's statutory documents. An authorized representative of the debtor's founders, participants or shareholders may participate in the creditors meetings with the advisory vote.			

UKRAINE

	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation
Is there a requirement for voting approvals by shareholders' creditors?	Yes. Most of the decisions in the pre-trial solvency renewal proceedings and in the bankruptcy proceedings are approved/taken by the creditors' meeting and by the creditors' committee before being approved by the court. All competitive creditors have full capacity to vote on the creditors' meetings, whereas secured creditors have limited rights and have advisory vote at such meetings, except for voting for approval of the pre-trial solvency renewal plan or solvency renewal plan within the bankruptcy proceedings. Specific rules apply to establishing a quorum of the first creditors meeting. Approval requires a simple majority of the voting creditors present at the creditors meeting or the meeting of the creditors' committee.			
Is there an ability to bind minority dissenting creditors?	Yes. Dissenting creditors are bound by the decisions of the majority taken at the creditors meeting. Generally, decisions of a creditors meeting should be approved by a simple majority of the votes of the creditors present at the meeting. Specific rules apply to the approval of the pre-trial solvency renewal plan and the solvency renewal plan in the bankruptcy proceedings, specifically in part of approval by the secured creditors.			
COMMENCING THE PROCESS				
Who can commence?	The procedure is initiated by the debtor upon the respective decision of its founder(s), participant(s) or shareholder(s).	The assets management stage may be commenced by the court upon the initiative of a creditor(s) or the debtor. The debtor is obliged to apply for the bankruptcy within one month after it has discovered insufficiency of funds to discharge the existing debts.	The solvency renewal stage may be introduced by the court as the next stage of the bankruptcy proceedings after the assets management stage, once the solvency renewal plan is considered and approved by the creditors and the court. The assets manager together with the debtor shall draft the solvency renewal plan during the assets management stage and present to the creditors for approval. During the assets management stage, any potential investor willing to participate in the solvency renewal proceedings may apply to court with its proposals as to the solvency renewal mechanism.	The liquidation stage is introduced by the court: • at the request of the creditors, upon completion of the assets management stage or the solvency renewal stage, in case of insolvency of the debtor and absence of the solvency renewal plan • at the request of the creditors' committee, upon completion of the asset management stage, in case of insolvency of the debtor and absence of the solvency renewal plan

UKRAINE	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation
				• at the initiative of the solvency renewal manager, upon completion of the solvency renewal stage • at the court's initiative in absence of the respective request form the creditors upon completion of the asset management stage or the solvency renewal stage, should the court establish insolvency of the debtor • at the court's initiative, if the solvency renewal plan is not duly performed, or if the plan is not duly approved within the established term, or the creditors fail to approve the amended solvency renewal plan in case of insufficiency of the debtor's assets (sold within the solvency renewal stage) to pay off the debt
Is shareholder's consent required to commence proceedings?	Yes. The procedure is initiated by the debtor upon the decision of the founder(s), participant(s) or shareholder(s) of the debtor.	This depends on the debtor's statutory documents. To commence the bankruptcy proceedings (which start with the assets management stage), the debtor shall present to the court the decision of the competent management body to run for such proceedings. There is no such requirements for the creditor(s) applying for commencement of the bankruptcy proceedings.	No.	No.

UKRAINE

	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation
Is there an ability to consolidate group estates?	No. The same court may run bankruptcy proceedings of different entities of the same group; however, the estates and liabilities shall not be consolidated.			
Is there any court involvement?	At this stage, the court: • reviews the pre-trial solvency renewal plan and approves it • imposes moratorium on satisfaction of creditors' claims • appoints a solvency renewal manager (if foreseen by the plan), who acts as the debtor's manager • dismisses inefficient solvency renewal manager at the request of the debtor, creditor or at its own initiative • terminates the pre-trial solvency restoration stage at the request of the debtor or creditor, if the plan is not performed/will not be performed • approves the report on performance of the pre-trial solvency renewal plan	At this stage, the court: • decides on the commencement of the bankruptcy proceedings and the assets management stage • introduces moratorium on satisfaction of creditors' claims • appoints the assets manager, dismisses/replaces the manager in certain cases • arranges for revealing of the competitive creditors; considers and approves creditors' claims; approves the register of the creditors' claims • appoints the first meeting of the creditors • decides on the termination of the authorities of the debtor's management upon request of the creditors (or other parties to the proceedings), if such management obstructs the proceedings, fails to take actions to secure the assets etc.	At this stage, the court: • decides on the commencement of the solvency renewal stage • arranges for the reveal of the potential investors willing to participate in the solvency renewal proceedings • appoints a solvency renewal manager, dismisses/replaces the manager in certain cases • approves the solvency renewal plan, amendments to such plan after approval by the creditors; oversees its execution by the solvency renewal manager • approves the report of the solvency renewal manager on the solvency renewal stage • based on the creditors' decision, terminates the proceedings, or decides to move to the liquidation stage if the solvency renewal stage is not successful	At this stage, the court: • decides on the commencement of the liquidation • determines the term of the liquidation stage (up to 12 months) • appoints the liquidator, who acts as the debtor's manager, dismisses/replaces the manager in certain cases • resolves claims on actions of the liquidator • considers creditors' claims, which arose after commencement of the bankruptcy proceedings • approves the liquidator's report, the balance sheet on the assets sold and claims satisfied • decides on liquidation of the debtor, or terminates the proceedings in certain cases

UKRAINE	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation
		• considers the requests for challenging the financially disadvantageous agreements entered by the debtor after commencement of the bankruptcy proceedings or within three years prior to commencement of the bankruptcy proceedings • decides on the next stage of the proceedings (i.e., the solvency renewal stage or the liquidation stage) or termination of the proceedings	• considers the requests for challenging the financially disadvantageous agreements entered by the debtor after commencement of the bankruptcy proceedings or within three years prior to commencement of the bankruptcy proceedings	
Who manages the debtor?	The debtor's management remains acting or, if the pre-trial solvency renewal plan provides for appointment of the solvency renewal manager, the manager acts as the debtor's manager.	The assets manager does, although the debtor's management remains in its capacity. Generally, the assets manager cannot intervene the commercial activities of the debtor. The court may decide to terminate the authorities of the debtor's management upon request of the creditors (or other parties to the proceedings), if such management obstructs the proceedings, fails to take actions to secure the assets etc. In such case the assets manager exercises all managing powers over the debtor.	The solvency renewal manager does. For the period of the solvency renewal proceedings, unless otherwise is set forth by the solvency renewal plan, the debtor's management is not able to exercise any statutory powers in part of disposal of the property and shall pass all statutory and accounting documents, stamps etc. to the solvency renewal manager.	The liquidator does. The authority of the debtor's management terminates and the liquidator exercises full management of the debtor.

UKRAINE

	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation
What is level of disclosure of process to voting creditors?	The creditors may: • review and approve/object against the pre-trial solvency renewal plan • have access to the liquidation analysis and the report on financial standing of the debtor • have access to the report of the pre-trial solvency renewal manager as to the results of performing of the plan	The creditors may: • have access to the information on the debtor's financial standing • receive reports from the assets manager on results of its activities • participate in all court hearings, provide their position on all procedural actions of the court • participate in the creditors' meetings to decide on the next stage of the proceedings (i.e., on moving to the solvency renewal stage or liquidation of the debtor) • challenge financially disadvantageous deals entered by the debtor after the commencement of the bankruptcy proceedings or within three years before commencement of the bankruptcy proceedings	The creditors may: • have access to the information on the debtor's financial standing • review and approve/object against the pre-trial solvency plan • review the quarterly report of the solvency renewal manager • approve large scale transactions concluded by the solvency renewal manager • challenge financially disadvantageous deals entered by the debtor after commencement of the bankruptcy proceedings or within three years before commencement of the bankruptcy proceedings • participate in the creditors' meeting to approve the report of the solvency renewal manager on the results of the performing of the solvency renewal plan, to decide on the termination of the proceedings, the extension of the solvency renewal proceedings or the move to the liquidation stage	The creditors may: • have access to the information on the debtor's financial standing and the available assets • review the reports of the liquidator on the actions taken towards satisfaction of the creditors' claims at the liquidation stage • challenge financially disadvantageous deals entered by the debtor after commencement of the bankruptcy proceedings or within three years before commencement of the bankruptcy proceedings • participate in the court hearings on consideration and approval of the liquidation report and balance sheet • consider and approve/object to the conditions of sale of the debtor's assets on auctions

UKRAINE

	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation
What entities are excluded from customary insolvency or reorganization proceedings, and what legislation applies to them?	Specific rules apply to the pre-trial solvency renewal procedure of the state enterprises and enterprises with more than 50% of state share, the bankruptcy proceedings of banks and financial institutions, state enterprises, enterprises with more than 50% of state share, insurance companies, depositaries and securities market participants and farms. Separate procedures apply to the bankruptcy of individuals. State enterprises and enterprises with more than 50% of state share may not be liquidated and may only be subject to the solvency renewal proceedings. The list of state enterprises that are not subject to the privatization is approved by the Ukrainian government. The state enterprise may be excluded from this list and their assets may be subject to sale at the liquidation stage. The bankruptcy procedures applied to banks and financial institutions are determined by the Law of Ukraine "On the System of Guaranteeing the Individuals' Deposits." The proceedings in respect of other specific categories of debtors are carried according to the Code of Ukraine on Bankruptcy Procedures.			
How long does it generally take a creditor to commence the procedure?	N/A The procedure is commenced at the initiative of the debtor.	When a creditor has its undisputed claims (e.g., proved by the effective court decision or recognized by the debtor), it may apply to the court for the commencement of the bankruptcy proceedings. The decision on the commencement of the bankruptcy proceedings (and commencement of the assets management stage) is rendered by the court after the debtor's objections are considered and the preparatory hearing is held. In practice, it may take about one month for the court to render such a decision.	N/A The solvency renewal stage is commenced after the solvency renewal plan is approved by the creditors and the court.	N/A

UKRAINE

	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation
EFFECT OF PROCESS				
Does the debtor remain in possession with the continuation of incumbent management control?	Yes. The debtor's management remains acting or, if the pre-trial solvency renewal plan provides for appointment of the solvency renewal manager, the latter acts as the debtor's manager.	Yes. However, the debtor's activity is supervised by the assets manager. If the authorities of the debtor's management are terminated by the court, the assets manager may act in the capacity of the debtor's management.	No. The solvency renewal manager does. For the period of the solvency renewal proceedings, unless otherwise is set forth by the solvency renewal plan, the debtor's management is not able to exercise any statutory powers in part of disposal of the property and shall pass all statutory and accounting documents, stamps etc. to the assets manager.	No. The liquidator does. The authority of the debtor's management terminates and the liquidator exercises all management of the debtor.
What is the stay/moratorium regime (if any)?	The moratorium prohibiting satisfaction of creditors' claims is applied for the period of consideration of the pre-trial solvency renewal plan until its approval by the court.	Once the bankruptcy proceedings have commenced, the court applies the moratorium on satisfaction of the creditors' claims, which is due before the commencement of the proceedings.	The moratorium on the satisfaction of the creditors' claims, applied during the assets management stage, remains effective.	The moratorium on the satisfaction of the creditors' claims, applied during the assets management stage, remains effective until the debtor is liquidated or the proceedings are closed. Satisfaction of creditors' claims is made only within the liquidation proceedings.
Is there a provision for debtor-in-possession super priority financing?	No.			
Can the procedure be used to implement a debt-to-equity swap?	This is not specially provided by the bankruptcy legislation. Since it is not directly prohibited, this procedure may be implemented under the pre-trial solvency renewal plan or by the solvency renewal plan concluded within the bankruptcy proceedings.			
Are third-party releases available?	This is not specially provided by the bankruptcy legislation. Under the general rule, the pre-trial solvency renewal plan or the solvency renewal plan concluded within the bankruptcy proceedings shall not affect the claims of the creditor to any third parties if that creditor objected to and voted against the approval of the solvency renewal plan.			

UKRAINE

	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation
Are the proceedings recognized abroad?	Ukraine is not a party to any specific treaty or convention on recognition of the pre-trial solvency renewal proceedings or bankruptcy proceedings and related court decisions outside of its territory. Thus, the decisions rendered by the court in the pre-trial solvency renewal proceedings or bankruptcy proceedings shall be recognized under the general rules of recognition and enforcement of court decisions rendered in Ukraine, namely, according to the international treaties on recognition of foreign judgements entered by Ukraine or in absence of a treaty, under the reciprocity principle.			
Has the UNCITRAL Model Law been adopted?	No.			
How long, complex and expensive is the process?	The specific term of the pre-trial solvency renewal proceedings shall be determined in the pre-trial solvency renewal plan. In case of failure to perform the plan within the established period, the court may dismiss the solvency renewal report leaving all unpaid claims of the creditors due. The complexity and cost of the proceedings depend on the type and size of the debtor, amount and composition of claims, amount and type of assets owned by the debtor, existence of potential investors and other factors. The statutory costs include court fees and fees paid to the pre-trial solvency renewal manager. The amount of fees paid to the manager is determined at the creditors' meeting and is set forth in the pre-trial solvency renewal plan. As of 2020, such monthly fees shall not be less than four minimum monthly salaries, determined by the state budget (approximately USD 700 for 2020). The initiator of the proceedings shall pay these fees in advance.	Despite the statutory term of the assets management stage, in practice the procedure may be significantly delayed (often intentionally by the debtor or interested persons). The delays may be caused by challenging the procedural decisions rendered by the court, in particular the ruling on the commencement of the proceedings. A significant number of creditors may also cause delay, since the court needs to consider each claim, address the position of the assets manager in this regard. The assets manager itself may cause delays due to failure to provide the report on the debtor's financial standing, denial of creditors' claims, failure to consider the claims etc. The complexity and cost of the proceedings depend on the type and size of the debtor, the amount and composition of claims, the amount and type of assets owned by the debtor and other factors. The statutory costs include court fees and fees paid to the assets manager.	The specific term of the solvency renewal stage shall be determined in the solvency renewal plan. In case of potential failure to perform the plan within the established period, the creditors shall amend the plan in the respective part. If such amendments are not approved by the court, and if the plan is not performed by that time, the court shall move to the liquidation stage. The complexity and cost of the proceedings depend on the type and size of the debtor, the amount and composition of claims, the amount and type of assets owned by the debtor, the existence of potential investors and other factors. The statutory costs include court fees and fees paid to the solvency renewal manager. The amount of fees paid to the manager is determined at the creditors' meeting and is set forth in the solvency renewal plan. As	Despite the statutory term of the liquidation proceedings, in practice the procedure may be significantly delayed (often intentionally by the debtor or interested persons). The delays may be caused by challenging the procedural decisions rendered by the court at this stage or challenging the liquidator and its actions. Sale of the debtor's assets through auction may also be delayed in case of breach of the procedure of auction appointment, inaccurate description of the assets, or absence of any interested buyers to purchase the asset. The statutory costs include court fees and fees paid to the assets manager. The amount of fees paid to the manager is established by the court. As of 2020, such monthly fees shall be equal to the average salary of the debtor's director for the last 12 months, but not be less than three minimum monthly salaries, determined by the state budget (approximately USD 525 for 2020). The initiator of the proceedings shall pay these fees in advance.

UKRAINE	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation
		The amount of fees paid to the manager is established by the court. As of 2020, such monthly fees shall be equal to the average salary of the debtor's director for the last 12 months, but not be less than three minimum monthly salaries, determined by the state budget (approximately USD 525 for 2020). The initiator of the proceedings shall pay these fees in advance.	of 2020, such monthly fees shall not be less than four minimum monthly salaries, determined by the state budget (approximately USD 700 for 2020). The initiator of the proceedings shall pay these fees in advance.	
Is there a mandatory set-off of mutual debts on insolvency?	This is not mandatory. Although set-off of mutual claims are not specifically determined by the law as one of the ways to restore financial solvency of the debtor, in practice it may be applied at the pre-trial solvency renewal stage or within the bankruptcy proceedings at the solvency renewal stage, if such set-off is foreseen by the solvency renewal plan and approved by the creditors and by the court. The set-off of mutual similar claims may take also place at the liquidation stage upon consent of the respective creditor(s), unless the rights of other creditor(s) are violated by such a set-off.			
Can a debtor continue to carry on business during insolvency proceedings?	Yes. Specific restrictions may be foreseen in the pre-trial solvency renewal plan.	Yes, with certain restrictions. The debtor's management may not take any actions towards: • reorganization or liquidation of the debtor • incorporation of new entities, representative offices, acquiring participation in other entities • securities emission • payment of dividends • purchase of debtor's shares issued earlier	Yes. Specific restrictions may be foreseen in the solvency renewal plan. Large-scale transactions entered by the solvency renewal manager shall be approved by the creditors' committee, unless the plan sets forth otherwise.	No. At the liquidation stage, all commercial and business activities of the debtor are terminated.

- disposal or seizure of the debtor's real estate assets, transfer such assets under pledge, into statutory capital of other entity
- providing any loans, guarantees, suretyships, transfer of the assets under trust

OTHER FACTORS

Are there any wrongful or insolvent trading restrictions, and what is the directors' liability?

There are no specific restrictions.

Criminal liability is applied to the debtor's founders, participants or management for letting bankruptcy, namely, intentionally admitted insolvency, which caused significant damages to the state and/or creditor(s).

The debtor's director is obliged to apply to the court to commence the bankruptcy proceedings within one month after it was discovered that the debtor may potentially become insolvent if any of the creditors' claims are satisfied. If the debtor's director fails to apply, it may be held subsidiary liable for the debtor's debts.

If it is established that the insolvency was caused by the guilty actions of the debtor's founders, participants or debtor's director, they may bear subsidiary liability for the debtor's debts in case of the insufficiency of the debtor's assets to pay of such debts.

UKRAINE

Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation

What is the order of priority of claims?

Ukrainian legislation sets up the following order of priority of claims:

First Priority

(1) payment of the termination allowance to the bankrupt's employees, and repayment of any loan received by the bankrupt for the payment of such termination allowances

(2) claims of creditors under insurance agreements

(3) claims for recovery of costs associated with the conduct of the bankruptcy proceedings

Second Priority

(1) liabilities arising from the infliction of harm to life or health of an individual, by means of capitalization of the respective payments

(2) liabilities relating to mandatory pension and social security contributions

(3) claims of individuals whose property or funds are deposited with the bankrupt, where the bankrupt is a trust company ("dovirche tovarystvo"), a bank or other credit-financial institution, or any other business entity

Third Priority

(1) local and state taxes and other mandatory payments

(2) claims of the State Reserve Fund, attracting the assets of individual depositors

Fourth Priority — claims of creditors not secured by pledge (mortgage) of the bankrupt's assets (other than claims of the fifth and sixth priorities), including claims that arose during the asset management proceedings or solvency renewal proceedings;

Fifth Priority — claims for the repayment of the bankrupt's employees' contributions to the charter fund of the bankrupt;

Sixth Priority — other remaining claims

Higher priority claims must be satisfied in full before any lower-ranking claims may be paid. In the event that the cash proceeds from the sale of the assets are insufficient to satisfy all claims with equal priority, they must be satisfied on a pro rata basis. Claims not paid due to the insufficiency of funds in the liquidation proceedings are deemed extinguished. Any assets remaining after the satisfaction of the claims of the creditors are to be returned to the "owners" of the debtor (i.e., its shareholders or holders of its participatory interests) if the court decides to dissolve the debtor. The court is not able to dissolve the debtor if the remaining assets of the debtor exceed the amount of assets required by law for the operation of the relevant legal entity.

Ukrainian legislation establishes a special order of priority for the satisfaction of creditors' claims for certain categories of debtors.

UKRAINE

	Pre-Trial Solvency Renewal	Assets Management	Solvency Renewal	Liquidation

Are there any pension liabilities?

The moratorium imposed in the bankruptcy proceedings does not affect pension payments, which shall be paid by the debtor according to the legislatively established terms. Pension debts are included in the first order of priority of satisfaction of creditors' claims. Such debt is not subject to restructuring at the solvency renewal proceedings.

Is it possible to challenge prior transactions?

The financially disadvantageous transactions entered by the debtor after the commencement of the bankruptcy proceedings, or within three years prior to such commencement, may be challenged by the assets manager, solvency renewal manager, liquidator or any creditor.

Such challenging can be made where:

- the debtor alienated its assets, assumed obligations or abandoned its claims without compensation
- the debtor fulfilled its obligations before the due date
- prior to commencement of the bankruptcy proceedings, the debtor entered into an agreement that led to its insolvency
- the debtor paid a creditor or accepted any property/assets as a set-off of payment obligations of its contractor, and as a result of such payment or set-off the amount of the debtor's assets became insufficient to satisfy the creditors' claims
- the debtor alienated or acquired property at a price that was lower or higher than the market price, provided that the debtor's assets were insufficient for the satisfaction of creditors' claims at that time
- the debtor pledged its property to secure the fulfillment of pecuniary claims

The solvency renewal manager may withdraw from pending transactions entered by the debtor before the solvency renewal stage, unless entering such transactions is foreseen by the solvency renewal plan.

UKRAINE

Pre-Trial Solvency Renewal | **Assets Management** | **Solvency Renewal** | **Liquidation**

COVID-19

Is state support for distressed businesses available?	No specific amendments were introduced into the bankruptcy legislation in light of COVID-19 effect, so far.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	Specific procedure of restructuring of non-default loans and possibility for the debtors to apply for "payment vacations" were applied as a part of amendments to the banking legislation on 26 March 2020. Payment of certain taxes was suspended (e.g., land tax) and other tax rates were reduced for the period of officially established quarantine. The term of the suretyships securing obligations was prolonged for the term of the quarantine. More new regulations are to follow.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	There is a law initiative on amending the bankruptcy legislation in response to COVID-19 effect. This initiative is being considered by the Ukrainian Parliament but is not yet adopted. The respective draft law suggests prohibiting the commencement of the bankruptcy proceedings in respect of the debtors, whose debt arose after 1 February 2020. It also suggests the possible suspension of auctions on sale of the debtor's assets, suspension for the term of quarantine of penalties and interest accruing on the debts restructured under the solvency renewal plan etc. This initiative also suggests amendment of the procedural mechanisms for the term of quarantine, in particular, the mechanism of holding creditors' meetings and creditors' committee meetings, voting, execution of decisions, etc.

UPDATED MAY 5, 2020

UNITED ARAB EMIRATES

UAE	Schemes of arrangement	Insolvency and liquidation
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Yes, over all types of assets, including working capital.	Yes, over all types of assets, including working capital.
What is the nature of the process?	There are two types of schemes of arrangement: a preventative composition and a restructuring scheme, depending on the financial status of the debtor.	If there is no buy-in to a restructuring scheme, then the debtor will be put into insolvency and liquidation.
What is the solvency requirement?	A debtor must evidence that it could emerge out of insolvency as a result of the scheme by putting in place a plan. For the preventative scheme to be actionable, the debtor must be in a dire financial situation but not yet in default of payment for more than 30 days. While for the restructuring scheme to be actionable, the debtor must be in default of payment for more than 30 days or in a state of over indebtedness (i.e., insolvent).	The debtor may be put into insolvency if it remains in default for 30 days on a debt of at least AED 100,000 and if it does not cure such default for more than 30 days after being served a notice to cure the default or if it is in a state of over-indebtedness. An amendment to the insolvency law, introduced in December 2019, has allowed secured creditors to file for insolvency if the debtor was in default of payment and the value of their security does not cover the outstanding debt anymore.

UAE

	Schemes of arrangement	Insolvency and liquidation
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes, as the competent court will be the court where the main center of business is located, as defined in the Code of Civil Procedures as the place of location of the insolvent. While under the old insolvency law, which was embedded in the Code of Commercial Transactions, there was an article that allowed the UAE court to look into the insolvency of any agency or branch that had business in the UAE, even if the parent was not insolvent in its home jurisdiction, such a provision was removed from the new insolvency law and the issue of cross-border insolvencies is not provided for. In practice, it is our view that it would be possible to put into insolvency a branch or an agency of a foreign company in the UAE even if the parent is not insolvent in its home jurisdiction.	Yes, as the competent court will be the court where the main center of business is located, as defined in the Code of Civil Procedures as the place of location of the insolvent. While under the old insolvency law, which was embedded in the Code of Commercial Transactions, there was an article that allowed the UAE court to look into the insolvency of any agency or branch that had business in the UAE, even if the parent was not insolvent in its home jurisdiction, such a provision was removed from the new insolvency law and the issue of cross-border insolvencies is not provided for. In practice, it is our view that it would be possible to put into insolvency a branch or an agency of a foreign company in the UAE even if the parent is not insolvent in its home jurisdiction.
Is restructuring of both secured and unsecured claims possible?	A vote on either the presentative composition plan or the restructuring plan requires an affirmative vote by a majority of the creditors holding two-thirds of the value of the debt of the insolvent. Secured creditors are not allowed, in principle, to vote on the plan unless they waived their security. An amendment to the law was introduced in December 2019 to allow secured creditors to vote on the plan while retaining their security, if the plan affected their security. The court is also at liberty to move a security if it is in the best interest of the creditors and for the purpose of the implementation of the plan and the continuation of the business.	No.
Is there a classification of creditors and shareholders?	Yes, government and judicial expenses come first, including the expenses used to pay experts and trustees, followed by employees for up to three months of their salaries, then secured creditors, unsecured creditors. Unsecured creditors are paid in preference to shareholders.	Yes, government and judicial expenses come first, including the expenses used to pay experts and trustees, followed by employees for up to three months of their salaries, then secured creditors, unsecured creditors. Unsecured creditors are paid in preference to shareholders.
Is there a requirement for voting approvals by shareholders?	While shareholder approval is required to apply for a preventative composition or a restructuring plan; voting by the shareholders is not required on the preventative composition or restructuring plans, as such a vote is restricted to creditors in the conditions provided above.	Yes, shareholders' approval is required for filing for insolvency but not if the creditors have filed for insolvency.

UAE	Schemes of arrangement	Insolvency and liquidation
Is there a requirement for voting approvals by shareholders creditors?	There are no such requirement in the law, but it could be envisaged if shareholders that are also creditors apply to have their loans recognized, then they would be able to vote on the plan.	No.
Is there an ability to bind minority dissenting creditors?	Yes, as the plan must be voted on by a majority of creditors holding two-thirds of the debt. An amendment to the law was introduced in December 2019 to allow secured creditors to vote on the plan while retaining their security, if the plan affected their security.	N/A
COMMENCING THE PROCESS		
Who can commence?	1) Only the debtor can apply for a preventative composition if it is in default of payment on its debts for less than 30 days or it is in a difficult financial situation. 2) The debtor or creditors for the restructuring plan, provided: a) for the debtor, that it is in default of payment for more than 30 days or it is in a state of over-indebtedness b) for the creditors, holding more than AED 100,000 in debt, provided that they had served a notice upon the debtor requesting them to cure the default within 30 days	The debtor or creditors may file for insolvency or the public prosecution, if it is in the interest of the public at large. Creditors must hold more than AED 100,000 of debt and must have served a notice on the debtor requesting them to cure the default within 30 days.
Is shareholder's consent required to commence proceeding?	Yes, if the debtor is applying for the preventative composition or restructuring plan.	Yes, if the debtor is filing for insolvency.
Is there an ability to consolidate group estates?	No, while the concept of holding company was recently introduced in the Commercial Companies Law, in matters of insolvency each company must have its own insolvency procedure.	No, while the concept of holding company was recently introduced in the Commercial Companies Law, in matters of insolvency each company must have its own insolvency procedure.
Is there any court involvement?	Yes, the law only envisages an in-court process and the court is heavily involved in the process. Approval from the court is required at each stage of the process, which makes it procedurally heavy.	Yes, the law only envisages an in-court process and the court is heavily involved in the process. An approval from the court is required at each stage of the process, which makes it procedurally heavy.

UAE

	Schemes of arrangement	Insolvency and liquidation
Who manages the debtor?	A trustee appointed by the court upon the suggestion of the debtor. The court may act upon such suggestion or may appoint another trustee.	A trustee appointed by the court upon the suggestion of the debtor. The court may act upon such suggestion or may appoint another trustee.
What is level of disclosure of process to voting creditors?	Once the process is engaged, the trustee will call upon the creditors to come forward with their loans and any substantiation thereto within 20 days from the date of publication of its notice in widely circulated newspapers. An expert will be appointed to assess the situation of the debtor and whether a plan could be viable. Once a plan has been put in place and approved by the court, such a plan will be put to the creditors for discussion (such creditors being divided into class of creditors i.e., secured, unsecured, bondholders etc.). Once the plan has been discussed with the creditors and a final form reached, it will again be submitted to the court that will decide to put it to a creditors' vote.	In insolvency, the trustee will call upon the creditors to come forward with their loans and any substantiation thereto within 10 days from the date of publication of its notice in widely circulated newspapers. The trustee will assess such loans and decide which ones to accept, reject or amend, and the best way to settle such loans. The assets of the debtor will be sold; the preferred way of sale being by way of public auction.

UAE

	Schemes of arrangement	Insolvency and liquidation
What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?	Government related entities; individuals that are not traders ; A trader is any person who performs commercial activities as defined in Article 5 of the Code of Commercial Transactions, which include, among others, purchase and sale for profit of: • commodities, any movable or immovable assets • banking business, investment business, funds, financing companies, brokerage • commercial papers • maritime or airfreight • restaurants, theatres, cinemas • public auction outfits Any commercial company is de jure considered a trader. Financial Free Zone entities: Financial Free Zones are zones created by a constitutional amendment and where the federal UAE civil and commercial laws do not apply in favor of laws that apply in such zones, and that have opted for the application of English law. These zones have their own laws (including their own insolvency laws), courts and financial regulator. For Government Related Entities this would be their decree of incorporation. Personal bankruptcy law for individuals who are not traders.	Government related entities; individuals that are not traders ; A trader is any person who performs commercial activities as defined in Article 5 of the Code of Commercial Transactions, which include, among others, purchase and sale for profit of: • commodities, any movable or immovable assets • banking business, investment business, funds, financing companies, brokerage • commercial papers • maritime or airfreight • restaurants, theatres, cinemas • public auction outfits Any commercial company is de jure considered a trader. Financial Free Zone entities: Financial Free Zones are zones created by a constitutional amendment and where the federal UAE civil and commercial laws do not apply in favor of laws that apply in such zones, and that have opted for the application of English law. These zones have their own laws (including their own insolvency laws), courts and financial regulator. For Government Related Entities this would be their decree of incorporation. Personal bankruptcy law for individuals who are not traders.
How long does it generally take for a creditor to commence the procedure?	For creditors holding more than AED 100,000 in loans, the debtor must have defaulted on their loans and they must have been served with a notice to cure the default within 30 days before commencing proceedings. Under an amendment introduced in December 2019, secured creditors may now commence proceedings if the value of their security no longer covers the outstanding loan.	For creditors holding more than AED 100,000 in loans, the debtor must have defaulted on their loans and they must have been served with a notice to cure the default within 30 days before commencing proceedings. Under an amendment introduced in December 2019, secured creditors may now commence proceedings if the value of their security no longer covers the outstanding loan.

UAE

	Schemes of arrangement	Insolvency and liquidation
EFFECT OF PROCESS		
Does debtor remain in possession with continuation of incumbent management control?	Yes but under trustee supervision.	No.
What is the stay/moratorium regime (if any)?	There is a moratorium between the period of application and the vote on the plan, which could extend to 75 days.	If put into insolvency, there would be no moratorium; the court could allow a secured creditor to enforce on its security within 10 days from the date of the application, after making sure that there is no collusion between the debtor and the secured creditor.
Is there a provision for debtor in possession super priority financing?	Yes, under a preventative composition or a restructuring plan it would be possible for the court to allow for new financing, which would take superiority over unsecured creditors or would be secured on an unsecured asset of the debtor, or to take superiority over an already existing security, however, with the approval of the secured creditors.	N/A
Can procedure be used to implement debt-to-equity swap?	Yes, but only to government and financial institutions, which are banks and financial institutions regulated by the UAE Central Bank.	N/A
Are third party releases available?	Yes.	Yes.
Are the proceedings recognised abroad?	No.	No.
Has the UNCITRAL Model Law been adopted?	No, please refer above. While under the old insolvency law, which was embedded in the Code of Commercial Transactions, there was an article that allowed the UAE court to look into the insolvency of any agency or branch that had business in the UAE, even if the parent was not insolvent in its home jurisdiction, such a provision was removed from the new insolvency law and the issue of cross-border insolvencies is not provided for. In practice, it is our view that it would be possible to put into insolvency a branch or an agency of a foreign company in the UAE even if the parent is not insolvent in its home jurisdiction.	No.

UAE	Schemes of arrangement	Insolvency and liquidation
How long, complex and expensive is the process?	It is complex and untested; however, strict timelines have been put in place. In order for a restructuring or a scheme of composition to be put in place, the estimate would be that 120 days would have passed before the plan is approved. The duration of the plans is a maximum period of six years for a preventative composition plan and a maximum period of eight years for a restructuring plan. An amount of AED 20,000 must be advanced to start the proceedings; this does not include lawyers' and other consultants' fees. Under the December 2019 amendment, lawyers' fees have been considered as preferred debt.	It is complex and untested; however, strict timelines have been put in place. The insolvency, depending on the size of the debtor and its assets, could take up to two years before it is closed. An amount of AED 20,000 must be advanced to start the proceedings, this does not include lawyers' and other consultants' fees. Under the December 2019 amendment, lawyers' fees have been considered as preferred debt.
Is there a mandatory set-off of mutual debts on insolvency?	Yes, provided that these debts have arisen before the insolvency.	Yes, provided that these debts have arisen before the insolvency.
Can a debtor continue to carry on business during insolvency proceedings?	Yes, with the approval of the trustee and under the supervision of the court.	Yes, with the approval of the trustee and under the supervision of the court.
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	There are very harsh penalties for fraudulent and negligent bankruptcies, which could be up to five years in jail and/or a fine of AED 1 million. Directors would be liable if it is proven their actions led to an inability of the company to cover at least 20% of its debts.	There are very harsh penalties for fraudulent and negligent bankruptcies, which could be up to five years in jail and/or a fine of AED 1 million. Directors would be liable if it is proven their actions led to an inability of the company to cover at least 20% of its debts.

UAE	Schemes of arrangement	Insolvency and liquidation
What is the order of priority of claims?	1) government and treasury debt 2) employees for up to three months salaries 3) secured creditors 4) unsecured creditors 5) shareholders	1) government and treasury debt 2) employees for up to three months salaries 3) secured creditors 4) unsecured creditors 5) shareholders
Are there any pension liabilities?	No.	No.
Is it possible to challenge prior transactions?	Yes, transactions conducted two years before insolvency. There are some transactions that would be considered de jure null and void if conducted up to two years before insolvency, these are: a) donations, gifts or gratuitous transactions b) any transactions that would be remarkably onerous for the debtor in comparison with the counterparty c) settling any loan before its maturity date d) settling any loans in means other than the means that were agreed upon e) offering any new security for a previous loan In addition to the above, the court may invalidate any transaction that would be harmful to the creditors and the counterparty was of bad faith (i.e., cognizant of the dire situation of the debtor).	Yes, transactions conducted two years before insolvency. There are some transactions that would be considered de jure null and void if conducted up to two years before insolvency, these are: a) donations, gifts or gratuitous transactions b) any transactions that would be remarkably onerous for the debtor in comparison with the counterparty c) settling any loan before its maturity date d) settling any loans in means other than the means that were agreed upon e) offering any new security for a previous loan In addition to the above, the court may invalidate any transaction that would be harmful to the creditors and the counterparty was of bad faith (i.e., cognizant of the dire situation of the debtor).

UAE

	Schemes of arrangement	Insolvency and liquidation
COVID-19		
Is state support for distressed businesses available?	Yes, various initiatives have been taken by the Central Bank and the government allowing banks to tap into AED 110 billion in the Targeted Economic Support Scheme (TESS), thus allowing banks to free up their reserves and boost lending. Banks have been using the TESS, and the UAE Central Bank has encouraged and welcomed their active participation.	Yes, various initiatives have been taken by the Central Bank and the government allowing banks to tap into AED 110 billion in a Targeted Economic Support Scheme (TESS), thus allowing banks to free up their reserves and boost lending. Banks have been using the TESS, and the UAE Central Bank has encouraged and welcomed their active participation.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	Yes, the Central Bank has asked banks to defer loans and to grant relief as long as the COVID-19 pandemic remains. It has also taken measures in favor of SMEs by alleviating their charges.	Yes, the Central Bank has asked banks to defer loans and to grant relief as long as the COVID-19 pandemic remains. It has also taken measures in favor of SMEs by alleviating their charges.
Is further reform of the insolvency regime being discussed/anticipated? If so, give details.	No future reforms is anticipated for the time being, as the law is relatively untested in the courts and we would need to see more cases before the law is amended.	No future reforms is anticipated for the time being, as the law is relatively untested in the courts and we would need to see more cases before the law is amended.

UPDATED MAY 6, 2020

UNITED STATES

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Chapter 11 of the United States Bankruptcy Code

INITIAL CONSIDERATIONS	
Can you take security over all types of assets, including working capital?	Generally, yes. In general, security is created under non-bankruptcy law.
What is the nature of the process?	Chapter 11 of the United States Bankruptcy Code ("**Bankruptcy Code**") may be used to effect operational restructuring, balance sheet deleveraging and/or commence asset sale of the business as a going concern.
What is the solvency requirement?	Solvency is not relevant for voluntary bankruptcy. Involuntary bankruptcy is limited to entities that do not generally paying their debts as they come due.
Is there a requirement to demonstrate COMI ("centre of main interests")?	No, but the debtor must demonstrate that it has a domicile, place of business or property in the US to be eligible to file. If COMI exists elsewhere, creditors may ask the court to dismiss the case in favor of commencement of the proceedings in another jurisdiction.
Is restructuring of both secured and unsecured claims possible?	Yes.
Is there a classification of creditors and shareholders?	Only similarly situated creditors can be classed together for voting purposes but a plan proponent has flexibility, provided that such proposed classification does not result in unfair discrimination or otherwise violate the Bankruptcy Code. Secured and unsecured creditors are separately classified.
Is there a requirement for voting approvals by shareholders?	Absent a cram down (see below), each class of impaired shareholders must accept the plan by two-thirds in amount.

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Is there a requirement for voting approvals by shareholders' creditors?	Absent a cram down, each class of impaired creditors must accept the plan by two-thirds in amount and majority in number. Votes of insiders (e.g., directors, officers or other control persons of the debtor, or affiliates of the debtor or insiders of such affiliates) are not counted for the purposes of creating an impaired accepting class.
Is there an ability to bind minority dissenting creditors?	A Chapter 11 plan may bind a dissenting member of an accepting class if it pays the dissenter at least as much as it would have received in a Chapter 7 liquidation. To bind a dissenting creditor class, the plan must be fair and equitable and must not unfairly discriminate against the dissenting class. A dissenting class of secured creditors must retain its liens and receive an amount equal to the present value of the assets securing the claim or the amount of its secured claim. For an unsecured dissenting class, the plan must satisfy the absolute priority rule. The standard "does not discriminate unfairly" generally means that similarly situated creditors must be treated similarly. For example, the treatment of general unsecured creditors must provide generally equivalent value for the rejecting crammed-down class as for the other classes of general unsecured creditors. The fair and equitable test for a plan cram down differs for secured creditors, unsecured creditors and equity holders. As the test is applied to unsecured creditors and equity holders, it requires that the members of the class receive property of a value equal to the allowed amount of their claims or that junior classes or interests receive nothing because of their claims or interests under the absolute priority rule (discussed below). With respect to secured creditors, the fair and equitable test generally requires that the creditor keeps its lien and receives deferred cash payments totaling at least the allowed amount of its secured claim, and that the present value (as of the effective date of the confirmed plan) of the payments to be made equals or exceeds the secured creditor's interest in the collateral. A plan may also be deemed fair and equitable with respect to secured creditors if it provides for deferred cash payments with a present value equal to the creditors' allowed secured claim within a reasonable time after confirmation of the plan (e.g., from a proposed sale of assets contemplated in the plan). The absolute priority rule holds that if a class is impaired and votes against the confirmation of a proposed plan, then the class must be paid in full (including unpaid accrued interest) before any junior class of claims or interests may receive anything of value under the plan due to their prepetition claims or interests. Accordingly, in cases where old equity wishes to retain an interest in the reorganized debtor despite paying creditors less than the full amount of their claims, the absolute priority rule can pose significant challenges. Under those circumstances, old equity holders must argue that they are not receiving anything because of their prepetition interests but because of new value contributed to the reorganized debtor under the new value exception to the absolute priority rule. The existence of the new value exception has been long debated and is still open to legal challenge. However, if the court recognizes the exception, old equity holders must establish that: (i) they are making a new contribution in money or money's worth; (ii) the contribution is reasonably equivalent to the value of the interest retained in the reorganized debtor; and (iii) the new value contribution is necessary for the implementation of a feasible plan of reorganization. Even if these requirements are met, the opportunity to invest in the reorganized debtor must be subjected to a market test such that old equity holders do not receive an exclusive opportunity to invest in the reorganized debtor because of their prepetition interests. The nature and scope of this market test can vary from case to case depending on the facts and circumstances.

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COMMENCING THE PROCESS	
Who can commence?	The absolute priority rule holds that if a class is impaired and votes against the confirmation of a proposed plan, then the class must be paid in full (including unpaid accrued interest) before any junior class of claims or interests may receive anything of value under the plan due to their prepetition claims or interests. Accordingly, in cases where old equity wishes to retain an interest in the reorganized debtor despite paying creditors less than the full amount of their claims, the absolute priority rule can pose significant challenges. Under those circumstances, old equity holders must argue that they are not receiving anything because of their prepetition interests but because of new value contributed to the reorganized debtor under the new value exception to the absolute priority rule. The existence of the new value exception has been long debated and is still open to legal challenge. However, if the court recognizes the exception, old equity holders must establish that: (i) they are making a new contribution in money or money's worth; (ii) the contribution is reasonably equivalent to the value of the interest retained in the reorganized debtor; and (iii) the new value contribution is necessary for the implementation of a feasible plan of reorganization. Even if these requirements are met, the opportunity to invest in the reorganized debtor must be subjected to a market test such that old equity holders do not receive an exclusive opportunity to invest in the reorganized debtor because of their prepetition interests. The nature and scope of this market test can vary from case to case depending on the facts and circumstances.
Is shareholders' consent required to commence proceedings?	Typically, no. Only to the extent required by the company's organizational documents.
Is there an ability to consolidate group estates?	In limited circumstances, bankruptcy courts may authorize substantive consolidation of debtors' estates. It is considered an extreme remedy and is generally only available where it is impracticable to disentangle the assets and liabilities of the different entities or where creditors can demonstrate that the entities held themselves out as a single economic unit and the creditors relied on that.
Is there any court involvement?	The proceeding is overseen by a federal bankruptcy court and court approval is required for activities outside the ordinary course of business. Court approval is not required for activities outside the ordinary course of business.
Who manages the debtor?	In a Chapter 11 case, the directors and officers who controlled the debtor prior to the bankruptcy generally remain in control of the debtor's assets and continue to run its business under the same governance principles that existed before the bankruptcy filing, subject to the supervision of the bankruptcy court. For this reason, a Chapter 11 debtor is referred to as a debtor in possession. The debtor cannot be removed except by court order under extraordinary circumstances, e.g., fraud or gross mismanagement, in which case a Chapter 11 trustee would be appointed.
What is the level of disclosure of the process to voting creditors?	A court-approved disclosure statement accompanies a Chapter 11 plan, providing adequate information about a debtor's financial affairs to allow creditors to make an informed decision when voting on the plan.

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What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?

Section 109 of the Bankruptcy Code provides that certain types of entities may not be debtors under the Bankruptcy Code.

These entities include insurance companies and commercial banks. Investment banks can file for Chapter 7 bankruptcy, which provides for liquidation but not for bankruptcy under Chapter 11, which contemplates reorganization.

State insurance law governs insurance company insolvencies.

Under the federal Dodd-Frank Act, federal regulators can take over the holding company of a systemically important financial institution and its subsidiaries. If the US Treasury, backed by two-thirds of the votes of the Federal Reserve Board of Governors and the Federal Deposit Insurance Corporation (FDIC) board, concludes that a financial company is on the verge of default or has defaulted and that its failure would have a serious adverse effect on financial stability in the US, it can trigger resolution by filing a petition in federal court — Section 2020 of the Dodd-Frank Act. Resolution under the Dodd-Frank Act only contemplates receivership, not reorganization under a conservator.

US bank supervisors may appoint the FDIC as a conservator of an insolvent bank. The FDIC may appoint itself as a conservator based on the statutory standards for appointment and to prevent a loss to the deposit insurance fund.

How long does it generally take a creditor to commence the procedure?

Creditors may commence an involuntary case by filing a petition with the bankruptcy court. The petition must be properly served on the company along with a summons. If an involuntary petition is filed against a company, the company may contest the petition within 21 days of receiving a summons, which typically involves the filing of an answer or motion to dismiss. If the company contests the involuntary petition, litigation will ensue as to whether the requirements discussed above have been met, which can sometimes last several months. If the bankruptcy court ultimately rules in favor of the petitioning creditors, it will enter an order for relief, which officially places the company into bankruptcy. See above for more information on the requirements for filing an involuntary case.

During the interim period between when the involuntary petition is filed and when the court makes a determination as to whether the requirements for an involuntary filing have been met, the company may continue to operate its business and use and acquire or dispose of its property as if an involuntary bankruptcy case had not been filed.

EFFECT OF PROCESS

Does the debtor remain in possession with the continuation of incumbent management control?

Yes — see above.

A debtor in possession may conduct the ordinary course of its business without court approval.

Bankruptcy court approval is required for any transaction that is outside the debtor's ordinary course of business, such as for major business decisions (e.g., sale of assets and entering into secured financing).

The debtor also has the exclusive right to propose a Chapter 11 plan for 120 days, subject to further extension. After this period expires, other parties in interest may propose their own Chapter 11 plan.

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Chapter 11 of the United States Bankruptcy Code

What is the stay/moratorium regime (if any)?	Upon the commencement of a bankruptcy case, the debtor obtains immediate protection from actions against its assets and operations by virtue of the automatic stay implemented under Section 362 of the Bankruptcy Code. By operation of the automatic stay, creditors are prohibited from attempting to collect prepetition debts of the debtor, seize assets of the debtor or otherwise exercise control over property of the debtor. For example, the automatic stay prohibits the commencement or continuation of litigation against the debtor or an attempt by a creditor to foreclose on the property of the debtor. There are, however, some exceptions to the automatic stay, For example, the automatic stay does not apply to the government's police or regulatory power. There are also exceptions to the automatic stay for certain types of financial arrangements, including with respect to enforcement against collateral provided for under certain derivatives contracts. Creditors can petition the bankruptcy court to lift the automatic stay, but such relief is usually only granted in narrow circumstances. Generally, secured creditors may seek relief from the automatic stay on the basis that their collateral is eroding in value and the debtor is not maintaining the value of their collateral, thereby entitling them to adequate protection from any diminution or relief from the automatic stay to permit foreclosure. To avoid being sanctioned for violating the automatic stay, any party considering adverse action against a debtor should first seek a bankruptcy court order providing relief from the automatic stay.
Is there a provision for debtor in possession super-priority financing?	A debtor can seek to entice lenders to provide debtor-in-possession financing ("**DIP financing**") with a range of tools that are routinely approved by bankruptcy courts. First, the debtor can offer administrative expense status to a potential lender. Next, if unable to obtain a loan on that basis, the debtor can offer the proposed lender a super-priority administrative claim (having priority over all other administrative claims). However, lenders usually require more than a simple administrative priority or super-priority claim to lend to a company in a Chapter 11 case because they are typically reluctant to run the risk of not being repaid in full as a result of administrative insolvency (i.e., insufficient funds to pay administrative claims in full). At the next level, the debtor may seek court approval to grant the proposed lender a lien on its unencumbered assets or secured by a junior lien on property that is already encumbered by a lien. Even though general unsecured creditors may object and insist on a showing of necessity for a proposed financing that involves granting liens on unencumbered assets, debtors typically prevail in such cases where they can show a reasonable prospect or likelihood for reorganization. At the highest level, a debtor may seek court approval to grant the proposed lender a lien on encumbered assets that is pari passu (of equal lien priority) with or that primes (of senior lien priority) existing liens. However, in this case, the debtor must establish "that it is unable to obtain such credit otherwise." Further, the debtor must establish that the existing lender is adequately protected notwithstanding the proposed pari passu or priming liens. This usually involves consideration of various factors, including: (i) a valuation of the subject property to assess the nature of any equity cushion that may exist; (ii) whether the property is eroding in value; (iii) the nature of payments proposed or available; and (iv) whether the debtor has a reasonable prospect of reorganizing. Typically, holders of existing liens would object vigorously to any liens that are pari passu with or that prime their existing liens absent a showing of how their liens are adequately protected. As the above factors are often difficult to prove, it is rare that a bankruptcy court will approve this treatment unless the adversely affected secured creditor consents.
Can the procedure be used to implement a debt-to-equity swap?	Yes — a common balance sheet restructuring that occurs in Chapter 11 cases. Shareholder consent is not required and the debt-to-equity swap can occur over the objection of shareholders as a result of the absolute priority rule and cram down (each discussed above).
Are third-party releases available?	Non-debtors, including officers and directors of the debtor, may generally be released through a plan if such releases are consensual. Non-consensual releases are generally approved only if essential to the debtor's reorganization, the parties being released are making a substantial financial contribution to the reorganization and the affected creditors overwhelmingly support the plan.

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Are the proceedings recognized abroad?	Yes, in accordance with the domestically adopted version of UNCITRAL or other applicable conflict of laws principles and/or treaties for other countries.
Has the UNCITRAL Model Law been adopted?	Yes — Chapter 15 of the Bankruptcy Code.
How long, complex and expensive is the process?	This depends on the objective the debtor hopes to achieve in the Chapter 11 case, the complexity of the case and how long the debtor can fund the case or how much DIP financing it receives. Some cases can last more than a year, particularly cases where the debtor has filed bankruptcy without a clear strategy to get out of bankruptcy. Where a debtor can achieve support for a particular reorganization from key creditor constituents prior to the bankruptcy filing, the debtor may be able to pursue a prepackaged plan, where the debtor solicits approval of its plan before the bankruptcy, or a pre-negotiated plan, where the debtor has an agreement with key constituents but still has to solicit votes in bankruptcy. The former may be confirmed typically within 45-60 days from the date of the bankruptcy filing, while the latter may be confirmed typically within 90-120 days from the bankruptcy filing. If a debtor seeks to use the bankruptcy process to effectuate a sale of substantially all of its assets, the debtor may be able to obtain approval of the sale within 90-120 days after the bankruptcy filing and outside of a Chapter 11 plan after the debtor has run a marketing process and held an auction. The debtor can also sell its assets through a Chapter 11 plan. Private sales are typically not permitted in Chapter 11 for all or a significant portion of the debtor's assets. The Chapter 11 process can be expensive, especially in large Chapter 11 cases, as the debtor's estate not only pays for the fees and expenses of its attorneys and financial advisers, but it also must pay for the fees and expenses of the attorneys and financial advisers for an official committee of unsecured creditors (and in some instances, an official committee of equity holders in cases where there is a reasonable prospect for equity to be recovered in the case). The expense of Chapter 11 is a key reason why debtors attempt to reduce their time in Chapter 11 through a prepackaged or pre-negotiated plan.
Is there a mandatory set-off of mutual debts on insolvency?	The Bankruptcy Code is not an independent source of law that authorizes set-off or recoupment. It recognizes and preserves certain rights that exist under non-bankruptcy law. Therefore, a creditor seeking to set off or recoup a debt must establish a claim and a right to do so under non-bankruptcy law. The Bankruptcy Code, however, generally limits the right of set-off to situations where the obligations between the debtor and creditor are mutual (i.e., both obligations are held by the same parties, in the same right or capacity) and both obligations arise either before the bankruptcy filing or after the bankruptcy filing. The Bankruptcy Code does not limit the right of recoupment.
Can a debtor continue to carry on business during insolvency proceedings?	Absent malfeasance, gross mismanagement or similar circumstances, the current management of a company remains in control of the company and continues to manage the company's day-to-day affairs during the Chapter 11 case. A debtor can continue to do business during the Chapter 11 case subject to obtaining court approval for transactions outside of the ordinary course of business.

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OTHER FACTORS

Are there any wrongful or insolvent trading restrictions, and what is the directors' liability?

None, except a prolonging insolvency or deepening insolvency tort that has been recognized only by a very small minority of courts.

A company is not obligated to file for US bankruptcy or discontinue trade upon discovering its insolvency; there is no director liability per se for failing to file for bankruptcy or to continue trading while insolvent.

What is the order of priority of claims?

The Bankruptcy Code requires a Chapter 11 plan to designate claimants into classes of claims and interest holders for treatment under the proposed plan. The term "claim" is broadly defined and it includes a right to payment or a right to an equitable remedy for a failure of performance if the breach gives rise to a right of payment.

Claims in a bankruptcy case are generally afforded the following priority:

- Secured creditors — individuals or entities holding claims against the debtor that are secured by a lien on property of the estate.
- Unsecured creditors entitled to priority under Section 507 of the Bankruptcy Code — for example, those holding claims incurred during administration of the case and that were necessary for or benefited the preservation of the debtor's estate, certain reclamation claims or claims with statutory priority over other unsecured creditors (e.g., certain wages, pensions and taxes).
- General unsecured creditors — individuals or entities holding allowed unsecured claims.
- Equity holders — individuals or entities holding interests in equity securities of a debtor (e.g., stock in a corporation).

Are there any pension liabilities?

A debtor may terminate its single-employer pension plans through a distressed termination in bankruptcy, leaving the US Pension Benefit Guaranty Corporation (PBGC) with an unsecured claim for the termination liabilities, if the debtor can effectively show that it could not continue in business or successfully reorganize itself if it is unable to terminate its pension plan. The PBGC can force an involuntary termination, but rarely does so.

Is it possible to challenge prior transactions?

The Bankruptcy Code grants a debtor the authority to avoid certain transfers and make recoveries for the benefit of the bankruptcy estate. These avoiding powers are generally intended to "level the playing field" by avoiding transactions that unfairly benefit certain unsecured creditors that should instead share in recoveries on an equal or pro rata basis with other similarly situated creditors. To this end, the debtor's avoiding powers include the power to:

- set aside preferential transfers made to non-insider creditors within 90 days prior to the petition date and, with respect to insiders, within one year prior to the petition date (generally, insiders are directors, officers and other control persons or their relatives, any affiliated entities and any insider of those entities)
- undo security interests and other prepetition transfers of property that were not properly perfected under non-bankruptcy law at the time of the petition date
- recover fraudulent transfers, that is, transfers made with actual intent to hinder, delay or defraud creditors or transfers made for less than reasonably equivalent value while the debtor was insolvent, or was rendered insolvent, or left with unreasonably small capital by such transfer

Bankruptcy courts can look back at transfers within two years of the petition date using the Bankruptcy Code's fraudulent conveyance provisions and up to four years (or six years in some jurisdictions) using state law.

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Is state support for distressed businesses available?	In some circumstances, depending on the debtor, a governmental entity may support a distressed entity. In most cases, this would be done on an ad hoc basis and it is not customary. For example, during the 2008 financial crisis, the US government provided DIP financing to General Motors to assist it in reorganizing under Chapter 11 of the Bankruptcy Code.

COVID-19

Is state support for distressed businesses available?	Yes. The Coronavirus Aid, Relief and Economic Security Act ("**CARES Act**") provides certain financing programs that are available to certain businesses. In general, there are four main categories of financing under the CARES Act: (i) SBA-guaranteed loans for paycheck protection and economic injury disaster loans, in each case provided to businesses with 500 or fewer employees (the paycheck protection loans are forgivable to the extent that they are used for payroll and other compensation purposes): (ii) loans made by the Federal Reserve to investment grade companies under its Primary Market Corporate Credit Facility; (iii) a Main Street lending program for companies with between 500 and 1,000 employees and up to USD 2.5 billion; and (iv) specific grants and loans for airlines and related businesses and for other businesses "critical to maintaining national security." There are other Federal Reserve programs available, including: (i) a municipal lending facility for US states, cities and counties; (ii) a Term Asset-Backed Securities Loan Facility, which allows US financial institutions to receive loans against collateral pledged to the Federal Reserve; (iii) a Secondary Market Corporate Credit Facility, which provides secondary market support for debt trading of obligations issued by investment grade companies; (iv) a Commercial Paper Funding Facility; (v) a Primary Dealer Credit Facility; and (vi) a Money Market Mutual Fund Liquidity Facility.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	Yes. Under the CARES Act, the eligibility requirements for small business debtor reorganizations were modified. As revised, an eligible debtor is a person engaged in commercial or business activities (excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate debts in an amount not more than USD 7,500,000 (excluding debts owed to affiliates or insiders), no less than 50% of which arose from the commercial or business activities of the debtor.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	No.

UPDATED MAY 6, 2020

VENEZUELA

VENEZUELA	Extrajudicial voluntary agreement	Reorganization proceedings
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Yes.	Yes.
What is the nature of the process?	Moratorium is a benefit that a court may grant to commercial companies and individual merchants whose assets exceed their liabilities but due to an excusable lack of liquidity are unable to pay their debts at maturity.	Unlike moratorium, bankruptcy is neither a protection nor a benefit. In the ordinary course of events, bankruptcy leads to the liquidation of the bankrupt estate by the trustee or receiver appointed by the bankruptcy court. Bankruptcy may be of three kinds: • fortuitous, if arising from fortuitous circumstances or force majeure • negligent, if caused by the negligence or imprudence of the bankrupt • fraudulent, if arising from fraudulent conduct of the bankrupt In case of negligent or fraudulent bankruptcy, the bankrupt is subject to the criminal sanctions provided for in the Venezuelan Criminal Code.
What is the solvency requirement?	Moratorium is available to those debtors whose assets exceed their liabilities (i.e., who are not insolvent), but due to a lack of liquidity cannot pay their debts at maturity. In order to be eligible for moratorium, the debtor must show that the lack of liquidity is excusable.	Bankruptcy is a proceeding applicable to commercial companies and individual merchants that are insolvent. This has been generally interpreted to mean that commercial companies or individual merchants are generally unable to pay their debts at maturity and do not meet the requirements to apply for moratorium.

VENEZUELA	Extrajudicial voluntary agreement	Reorganization proceedings
Is there a requirement to demonstrate center of main interests (COMI)?	No.	No.
Is restructuring of both secured and unsecured claims possible?	No. The order of privileges must be followed.	No. The order of privileges must be followed.
Is there a classification of creditors and shareholders?	Creditors only.	Creditors only.
Is there a requirement for voting approvals by shareholders?	Any approvals will be subject to the specific provisions of the Articles of Incorporation/Bylaws or those imposed by the court (if any).	Any approvals will be subject to the specific provisions of the Articles of Incorporation/Bylaws or those imposed by the court (if any).
Is there a requirement for voting approvals by shareholders' creditors?	Generally, no. Any approvals will be subject to the specific provisions of the Articles of Incorporation/Bylaws or those imposed by the court (if any).	Generally, no. Any approvals will be subject to the specific provisions of the Articles of Incorporation/Bylaws or those imposed by the court (if any).
Is there an ability to bind minority dissenting creditors?	Generally, no. Any approvals will be subject to the specific provisions of the Articles of Incorporation/Bylaws.	Generally, no. Any approvals will be subject to the specific provisions of the Articles of Incorporation/Bylaws.
COMMENCING THE PROCESS		
Who can commence?	Moratorium is commenced by the debtor's petition only. The petition must be filed by the debtor before a competent court.	Under Venezuelan law, bankruptcy may be initiated by: • The debtor. Directors of commercial companies that become insolvent must file for a bankruptcy proceeding within three days after the date of suspension of payments (i.e., the date on which the commercial company becomes generally unable to pay its debts at maturity). • One or more creditors. • A court denying or revoking a petition for moratorium, or declaring the expiration of the term of the moratorium.

VENEZUELA

	Extrajudicial voluntary agreement	Reorganization proceedings
Is shareholders' consent required to commence proceedings?	It is not a legal requirement to obtain formal or informal resolutions from the entity's board of directors or shareholders of the commercial company before filing any insolvency proceedings available in Venezuela. Depending on the specific provisions of the Articles of Incorporation/By-laws of the commercial company, a corporate resolution could be required.	It is not a legal requirement to obtain formal or informal resolutions from the entity's board of directors or shareholders of the commercial company before filing any insolvency proceedings available in Venezuela. Depending on the specific provisions of the Articles of Incorporation/By-laws of the commercial company, a corporate resolution could be required.
Is there an ability to consolidate group estates?	Yes, only contractually.	Yes, only contractually.
Is there any court involvement?	Yes. As mentioned above, the petition must be filed by the debtor before a competent court.	Yes.
Who manages the debtor?	As a general rule, debtors continue to operate and administer their day-to-day business within the scope of the plan for liquidating outstanding debts. Nevertheless, the court imposes several restrictions on the debtor in respect of the management and disposition of its assets. The debtor must obtain prior approval of the court to sell, pledge, mortgage, borrow money, compromise, collect receivables, make payments or perform any other acts that are necessary for purposes of liquidating its assets and satisfying its creditors. The debtor is also subject to supervision by the creditors' committee. In addition, under certain exceptional circumstances, the debtor also may be completely deprived by the court of the management of its business.	The debtor's assets and businesses are administered by the creditors through the receiver. The commercial company is completely deprived of its capacity to manage its assets.
What is the level of disclosure of the process to voting creditors?	Levels of disclosure will be subject to the specific provisions of the Articles of Incorporation/By-laws.	Levels of disclosure will be subject to the specific provisions of the Articles of Incorporation/By-laws.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	The following regulated entities domiciled in Venezuela are subject to special insolvency regimes, which are beyond the scope of this guide: • insurance commercial companies authorized by the Superintendent of the Insurance Activity (SAA) to conduct insurance activities in Venezuela • securities intermediaries authorized by the National Superintendent of Securities (SNV) to conduct securities intermediation activities in Venezuela • banks authorized by the Office of the Superintendence of Banking Sector Entities ("Superintendent of Banks") to conduct banking activities in Venezuela	
How long does it generally take for a creditor to commence the procedure?	As mentioned above, moratorium is commenced by the debtor's petition only. The petition must be filed by the debtor before a competent court.	The timing should be reviewed on a case-by-case basis.

VENEZUELA

	Extrajudicial voluntary agreement	Reorganization proceedings
EFFECT OF PROCESS		
Does the debtor remain in possession with the continuation of incumbent management control?	Yes. However, the debtor must obtain prior approval of the court to sell, pledge, mortgage, borrow money, compromise, collect receivables, make payments or perform any other acts that are necessary for purposes of liquidating its assets and satisfying its creditors. The debtor is also subject to supervision by the creditors' committee.	No. The commercial company is completely deprived of its capacity to manage its assets.
What is the stay/moratorium regime (if any)?	One of the main consequences of moratorium is that debts contracted prior to the moratorium mature by operation of law and become due. Additionally, non-privileged debts contracted before the declaration of moratorium are subject to stay and creditors are not entitled to sue for collection of their credits. Conversely, privileged debts and secured debts before the declaration of moratorium are not subject to stay and secured creditors are entitled to sue for collection and may foreclose on the collateral during the moratorium. Because of the moratorium, debts are automatically accelerated with respect to the debtor but automatic acceleration does not apply to co-obligors. Creditors whose actions against the debtor are subject to stay may freely collect their mature receivables from the debtor's co-obligors if the co-obligor is jointly and severally liable with the debtor. Debts contracted after the declaration of moratorium are not subject to stay if they have been authorized by the moratorium court and the creditors' committee.	The mandatory stay in cases of bankruptcy is the same as in moratorium. In addition, from the date of the bankruptcy decree, interest ceases accruing to unsecured creditors and creditors grandfathered by a civil law general privilege but continues accruing in favor of secured creditors.
Is there a provision for debtor in possession super priority financing?	This is not provided by law. This will be subject to the specific provisions of the Articles of Incorporation/By-laws.	This is not provided by law. This will be subject to the specific provisions of the Articles of Incorporation/By-laws.
Can the procedure be used to implement a debt-to-equity swap?	Not legally. However, it could be agreed upon contractually.	Not legally. However, it could be agreed upon contractually.
Are third-party releases available?	This will depend on a case-by-case basis.	This will depend on a case-by-case basis.

VENEZUELA

	Extrajudicial voluntary agreement	Reorganization proceedings
Are the proceedings recognized abroad?	In order to recognize effects in Venezuela of any foreign judgment, an exequatur proceeding will be required before the Venezuelan Supreme Court. This proceeding could take from one to two years to have a final decision. Once a final decision has been obtained, it will be required to follow an enforcement proceeding before a Venezuelan Trial Court. For a Venezuelan proceeding to be recognized above, it will depend on the existence of a treaty (e.g., Bustamante Code). In the absence of a treaty, it will depend on the applicable legislation of the jurisdiction seeking recognition.	In order to recognize effects in Venezuela of any foreign judgment, an exequatur proceeding will be required before the Venezuelan Supreme Court. This proceeding could take from one to two years to have a final decision. Once a final decision has been obtained, it will be required to follow an enforcement proceeding before a Venezuelan Trial Court. For a Venezuelan proceeding to be recognized above, it will depend on the existence of a treaty (e.g., Bustamante Code). In the absence of a treaty, it will depend on the applicable legislation of the jurisdiction seeking recognition.
Has the UNCITRAL Model Law been adopted?	No.	No.
How long, complex and expensive is the process?	Pursuant to the Venezuelan Commercial Code, the moratorium should not exceed 12 months. This term may be extended by a court under certain circumstances for an additional term of up to 12 months. Moratorium may be revoked by the court and converted into bankruptcy under any of the following circumstances: • The existence of debts that were not declared by the debtor in the petition for moratorium. • Assets listed by the debtor in its petition that, in fact, do not exist. • Failure by the debtor to comply with any obligation imposed by the court during the moratorium. • The discovery of fraud or bad faith by the debtor. • Insufficiency of the debtor's assets to satisfy at least two-thirds of the claims against the debtor. A moratorium proceeding may be dismissed at any time upon withdrawal of the petition by the debtor, payment of all debts, execution of an agreement with all creditors or a court order revoking the benefit. Early termination of the moratorium proceeding under any of these conditions will result in a bankruptcy decree. Because the insolvency provisions of the Venezuelan Commercial Code are so out of date and vague, there are many grey areas in the law, plenty of room for judicial discretion and some degree of unpredictability in the actual proceedings. These circumstances make insolvency proceedings in Venezuela quite long and complex.	Bankruptcy terminates with the liquidation of the bankrupt estate by the receiver. In the absence of clear and conclusive regulations, it is not possible to predict the approximate length and costs of a bankruptcy proceeding. Because the insolvency provisions of the Venezuelan Commercial Code are so out of date and vague, there are many grey areas in the law, plenty of room for judicial discretion and some degree of unpredictability in the actual proceedings. These circumstances make insolvency proceedings in Venezuela quite long and complex.

VENEZUELA

	Extrajudicial voluntary agreement	Reorganization proceedings
Is there a mandatory set-off of mutual debts on insolvency?	The general rule in Venezuela is that set-off of debts and credits take place by operation of law, provided that the debtor and the creditor have reciprocal obligations, each debt consists of money or assets of the same kind and both debts are mature. Set-off operates up to the value of the lesser debt. However, there are no statutory provisions specifically regulating the set-off of debts after the moratorium. Therefore, as with many other insolvency issues under Venezuelan law, there is no certainty of result. In the absence of specific regulations, commentators have almost unanimously held that set-off cannot take place after the moratorium because such a transaction would negatively affect the rights of other creditors of the debtor. These commentators apply Article 1,340 of the Venezuelan Civil Code, which states that set-off cannot operate if it prejudices the rights of third parties. A few Venezuelan commentators support the argument that, as a matter of equity, set-off may take place during the moratorium if the reciprocal debts and credits arise from the same contract. However, we are not aware of case law or judicial precedents supporting this view.	The same set-off rules applicable in moratorium proceedings apply in cases of bankruptcy.
Can a debtor continue to carry on business during insolvency proceedings?	Yes. However, the debtor must obtain prior approval of the court to sell, pledge, mortgage, borrow money, compromise, collect receivables, make payments or perform any other acts that are necessary for purposes of liquidating its assets and satisfying its creditors. The debtor is also subject to supervision by the creditors' committee.	Generally, no. The commercial company is completely deprived of its capacity to manage its assets.
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	The general rule in moratorium proceedings is that the debtor continues the operation of its business. It should be noted, however, that the court imposes several restrictions on the debtor in respect of the management and disposition of its assets. The debtor must obtain prior approval of the court to sell, pledge, mortgage, borrow money, compromise, collect receivables, make payments or perform any other acts, which are necessary for purposes of liquidating its assets and satisfying its creditors. Based on the foregoing, the directors or officers should perform their duties as prescribed by the court and pursuant to the powers conferred upon them by the bylaws of the commercial company. If the directors attempt to exercise unauthorized powers, they will be civilly and criminally liable.	In a bankruptcy proceeding, the creditors, though the receivers, administer the bankrupt estate. The debtor is completely deprived of its capacity to manage its assets. In the ordinary course of events, bankruptcy proceedings lead to the liquidation of the bankrupt estate by a receiver appointed by the bankruptcy court. In bankruptcy proceedings, however, the bankrupt corporation could continue in existence only if, prior to the beginning of the liquidation of the bankrupt estate, at least three-fourths of the number of the creditors attending the creditors' meeting that hold claims representing three-fourths of the total amount of the bankrupt's debts reach an agreement to terminate the bankruptcy proceeding and to allow the debtor to continue operations under the terms and conditions set forth in the settlement agreement.

VENEZUELA

What is the order of priority of claims?

Extrajudicial voluntary agreement

Because the moratorium is designed to assist the commercial company in reaching an amicable arrangement with the creditors, it does not necessarily involve the liquidation of the assets of the debtor and the distribution of the proceeds thereof pursuant to rules of priorities. Nonetheless, if assets are liquidated, the distribution of the proceeds follows the order of priorities and privileges applicable in case of bankruptcy.

Reorganization proceedings

The proceeds of the liquidation of the debtor's personal property must be distributed among creditors in the following order of priority:

- Creditors holding tax claims and para-fiscal contributions up to certain statutory limits.
- Creditors holding labor claims up to certain statutory limits.
- Creditors holding claims for legal expenses incurred during the proceedings to preserve the property for the benefit of all creditors.
- Creditors holding security interests in specific collateral.
- Creditors with claims that enjoy special civil law privileges or liens on personal property by operation of law, e.g., liens on personal property in the possession of the creditor for any amounts due in connection with the construction, maintenance and improvement of such personal property.
- Creditors that are unsecured.

The proceeds of the liquidation of the debtor's real property must be distributed among creditors in the following order of priority:

- Creditors holding claims that enjoy a special civil law privilege or a lien on specific real property by operation of law, e.g., expenses incurred for the benefit of all creditors in the attachment, deposit or judicial sale of the property, taxes for the current and preceding year and registration fees and inheritance taxes.
- Claims secured by a mortgage with respect to specific mortgaged property.
- Creditors holding labor claims, including past due salaries, severance benefits and any other credits arising from an employment relationship.
- Creditors with claims that enjoy special civil law privileges or liens on personal property by operation of law.
- Creditors that are unsecured.

Upon the liquidation of the debtor's assets, the proceeds thereof must be distributed pursuant to the order of priorities set forth above. Each category of priorities must be fully satisfied before the proceeds of the liquidation may be used for the payment of subsequent categories. However, creditors with priority over specific collateral and who are not fully satisfied with the proceeds of such specific collateral participate in the distribution of the proceeds of other assets of the debtor (with respect to their deficiency claims) as unsecured creditors.

VENEZUELA	Extrajudicial voluntary agreement	Reorganization proceedings
		Within the same category of priorities, the proceeds of the liquidation, if insufficient to fully satisfy such category, will be distributed pro rata among the creditors in proportion to the amount of their claims.
Are there any pension liabilities?	If this is labor related, the order of priorities mentioned above will apply.	If this is labor related, the order of priorities mentioned above will apply.
Is it possible to challenge prior transactions?	Yes. Venezuelan commentators refer to prior transactions as the "suspicious period," which precedes the final declaration of bankruptcy (i.e., the term between the cessation of payments and the bankruptcy declaration).	Yes. Venezuelan commentators refer to prior transactions as the "suspicious period," which precedes the final declaration of bankruptcy (i.e., the term between the cessation of payments and the bankruptcy declaration).
COVID-19		
Is state support for distressed businesses available?	No.	No.
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	No.	No.
Is further reform of the insolvency regime being discussed/ anticipated? If so, give details.	No.	No.

UPDATED MAY 12, 2020

VIETNAM

VIETNAM	Dissolution	Bankruptcy
INITIAL CONSIDERATIONS		
Can you take security over all types of assets, including working capital?	Generally, security can be taken over all types of assets, including objects, money, valuable documents or property rights. However, asset must be owned by the obligor (except for the cases of lien on property or title retention) and must be identified.	Generally, security can be taken over all types of assets, including objects, money, valuable documents or property rights. However, asset must be owned by the obligor (except for the cases of lien on property or title retention) and must be identified.
What is the nature of the process?	This is the dissolution process regulated under Enterprise Law, which will be enacted upon the occurrence of: • expiration of the operation term as provided in the company's charter; • voluntary dissolution decided by the owner of the sole proprietorship, all general partners of the partnership, Board of Members or owner of the limited liability company, or General Meeting of Shareholders of the joint-stock company; • the failure of maintaining the minimum number of members as required by laws for six consecutive months without initiating procedures for business conversion; • revocation of Enterprise Registration Certificate.	This is the bankruptcy process regulated by Bankruptcy Law. The process may be (in some cases are obliged to) instigated upon observation that an enterprise is unable to pay its due debts over a period of three months. Unsecured or partially secured creditors, employees, internal trade unions (or the superior trade union if the internal trade union is not established), the company itself or groups of shareholders files petition for bankruptcy proceeding to the competent court. The court shall issue a decision on whether to commence a bankruptcy process or not. If the court accepts, the assigned judge shall convene a creditors' meeting (Chapter VI of the Bankruptcy Law) to discuss if the recovery plan of business operations is carried out or declare the entity bankrupt.
What is the solvency requirement?	There is no solvency requirement. The company can voluntarily be dissolved. However, a company cannot be voluntarily dissolved if it unable to settle its outstanding debts. In such case, it may need to go through a bankruptcy proceeding.	The enterprise must be unable to pay its due debts over a period of three months. Such insolvency status shall be the legal basis for commencement of bankruptcy proceedings.

VIETNAM	Dissolution	Bankruptcy
Is there a requirement to demonstrate COMI ("centre of main interests")?	Yes, to define the competent business registration authority and tax authority to which the company should submit dossiers for dissolution.	Yes, in order to define jurisdiction of the court.
Is restructuring of both secured and unsecured claims possible?	N/A	Yes.
Is there a classification of creditors and shareholders?	No.	There is no classification for shareholders. Creditors are classified as (1) secured creditors; (2) partially secured creditors; (3) unsecured creditors.
Is there a requirement for voting approvals by shareholders?	In case of voluntary dissolution, Board of Member of limited liability company and General Meeting of Shareholders of the joint-stock company must pass a resolution on company's dissolution. The resolution will be passed if it receives affirmative vote representing 75% of total capital contribution of attending members (for limited liability company) and 65% of total votes of attending shareholders (for joint stock company).	No, shareholders vote is not required to initiate the bankruptcy process.
Is there a requirement for voting approvals by shareholders creditors?	No, however, third parties and creditors can object to voluntary dissolution of a company. This is done by filing a petition to the court.	The creditor can vote at the creditor's meeting, which will be convened by the assigned judge. Any creditor (or its proxy) on the list of creditors may attend such a meeting. The resolution of creditor's meeting will be approved by more than half of the total number of the unsecured creditors who are in attendance, representing at least 65% of the value of unsecured debts.
Is there an ability to bind minority dissenting creditors?	No, however, creditors can object to voluntary dissolution of a company. This is done by filing a petition to the court.	Yes. The resolution of creditor's meeting will be approved by more than half of the total number of the unsecured creditors who are in attendance, representing at least 65% of the value of unsecured debts. The approving ratio can bind minority dissenting creditors.

VIETNAM

	Dissolution	Bankruptcy
COMMENCING THE PROCESS		
Who can commence?	The following parties can commence the dissolution process: • The owner of the sole proprietorship, all general partners of the partnership, Board of Members or owner of the limited liability company, or General Meeting of Shareholders of the joint-stock company can decide to the volunteer dissolution of the company and submit notice to Business Registration Office; • Business Registration Office can revoke the Enterprise Registration Certificate; • Competent court can decide to liquidate a company.	The following parties can file petition for bankruptcy process at competent court: • unsecured or partially secured creditors; • employees, internal trade unions (or the superior trade union if the internal trade union is not established); • the company itself (the legal representative, the owner of a private enterprise/one-member limited liability company, chairman of the board of management of a joint-stock company, chairman of the Board of Members of a multi-member limited liability company, general partner of any partnership); • shareholder or any group of shareholders owning at least 20% of ordinary shares for at least six consecutive months, except when otherwise provided by the company's charter.
Is shareholder's consent required to commence proceeding?	The resolution to decide the company's voluntary dissolution must be passed by Board of Members or General Meeting of Shareholders of the company.	Not required. Shareholders voting is not required to initiate the bankruptcy process.
Is there an ability to consolidate group estates?	No. Assets and liabilities of group of companies are not consolidated.	No. Assets and liabilities of group of companies are not consolidated.
Is there any court involvement?	Yes, in case the company should be dissolved upon decision of the court.	Yes. The judge shall make a decision on initiation of bankruptcy process or refusal to initiate bankruptcy process within 30 days from the receipt of a written petition. If the competent court admits the petition, the assigned judge will convene a creditors' meeting. The decision of liquidation or recovery of business of the insolvent entity is eventually made by the assigned Judge based on the resolution of the creditors' meeting.

VIETNAM

	Dissolution	Bankruptcy
Who manages the debtor?	Owner or the Board of members of limited liability company, or the Board of Directors of joint stock company manages the company.	The insolvent entity shall keep running the business operation under the supervision of the judge and asset management officers and/or asset management enterprises designated by the court after the decision on the initiation of bankruptcy process is made. If perceived that the insolvent entity is incapable of running the business operation or deemed to violate the regulations, the assigned judge can decide to replace the legal representative of the insolvent entity upon the request of creditors' meeting or the asset management officers and/or asset management enterprises.
What is level of disclosure of process to voting creditors?	The creditors must be informed about the decision on dissolution of the company. The company needs to send the creditors the debt settlement plan with relevant rights, obligations, and interests. The plan must contain the deadline, location, and method of payment; method and deadline for settlement of creditors' complaints.	Under the Bankruptcy Law, creditors have the right to be informed and to record and make copies of the documents and evidence provided by other involving entities or collected by the judge. Creditors can request any individual, agency or organization keeping documents and evidences related to their lawful rights and interests to provide such documents and evidences so that they can hand them over to the People's Court. The individual, agency or organization has the obligation to sufficiently provide the documents and evidence within 15 days from the receipt of creditors' request.
What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?	subject to Enterprise Law. However, in case the entity is a credit institution, its dissolution will also be subject to Law on Credit Institution. That said, the credit institution can voluntarily be dissolved in the following cases: • if it is able to settle all debts and the dissolution is approved by State Bank of Vietnam; • the term of operation is expired without extension; and • the license issued by the State Bank of Vietnam is revoked.	In case the debtor is state-owned enterprises or those involved in defence or service of the public interest, the debtor organization may receive funding for recovery from the state to ensure its on-going solvency. In case the debtor is credit institutions in danger of becoming insolvent, it will be subject to the Law on Credit Institution. That said, the credit institution may be placed under "special control", a method of direct supervision, by the State Bank of Vietnam. Termination of such special control by the State Bank of Vietnam will allow such credit institutions, by a court's decision, to be liquidated and declared bankrupt, without being subject to the business operation recovery procedures.
How long does it generally take for a creditor to commence the procedure?	The creditors cannot commence dissolution process.	The following are main stages and relevant timeframe as stipulated under the Bankruptcy Law to commence the bankruptcy procedure: (1) Acceptance of jurisdiction over the petition: around 02 months from the date of submission of the petition; (2) Issuance of decision on commencement of insolvency proceedings: 30 days from the acceptance date.

VIETNAM

	Dissolution	Bankruptcy
EFFECT OF PROCESS		
Does debtor remain in possession with continuation of incumbent management control?	The managers of the company will keep their managerial titles. However, upon the decision on dissolution of the company, the company is subject to several restriction by laws in signing new contracts, mortgage assets, sale of assets etc.	The insolvent entity shall keep running the business operation under the supervision of the judge and asset management officers and/or asset management enterprises after the decision on the initiation of bankruptcy process is made. If perceived that the insolvent entity is incapable of running the business operation or deemed to violate the regulations, the assigned judge can decide to replace the legal representative of the insolvent entity upon the request of creditors' meeting or the asset management officers and/or asset management enterprises.
What is the stay/moratorium regime (if any)?	From the date of issuance of the decision on dissolution, the company and its manager are prohibited by law from: • Hiding, illegally liquidating assets; • Abandoning or reducing the right to claim debts; • Converting unsecured debts into debts secured on the enterprise's assets; • Signing new contracts, except for the purpose of dissolution; • Granting security over the assets; • Terminating effective contracts; • Raising capital in any shape or form.	(1) Transactions conducted by an insolvent enterprise may be deemed invalid where such transactions: (i) occur within six months prior to the date the People's Court issues a decision to commence bankruptcy procedures; and (ii) either (a) comprise the donation, settlement, payment or transfer of assets or debts not due or (b) unduly remove the assets of the enterprise or cooperative. (2) Transactions of an insolvent enterprise which are conducted with related persons within 18 months prior to the date when the court issued a decision to commence the bankruptcy procedures, may be deemed to be invalid. (3) As of the date of commencement of bankruptcy procedures, the insolvent enterprise shall be prohibited from undertaking the following activities: • Concealing or disposing of assets; • Paying unsecured debts, except for the unsecured debts arising subsequent to the commencement of bankruptcy procedures and paying wages to employees; • Abandoning or reducing rights to claim debts; and • Converting unsecured debts into debts secured by the assets of the enterprise. Any transactions as set out above shall be invalid and declared so by the court.

VIETNAM	Dissolution	Bankruptcy
Is there a provision for debtor in possession super priority financing?	No.	There is no specific provision allowing the debtor to obtain credit after commencement of bankruptcy proceedings (post-commencement credit) to finance its on-going needs during the proceedings.
Can procedure be used to implement debt-to-equity swap?	No.	Yes, during the business recovery of the company, the creditors can buy shares of the insolvent company to become shareholders.
Are third party releases available?	No.	No.
Are the proceedings recognised abroad?	It depends on the jurisdiction where the recognition is sought.	It depends on the jurisdiction where the recognition is sought.
Has the UNCITRAL Model Law been adopted?	No.	No.
How long, complex and expensive is the process?	General, the process is less complex than bankruptcy process. It is also less expensive than bankruptcy process. The period of the process is about 7 months by law, however, it may be prolonged in practice.	Bankruptcy procedures are very time-consuming, depending on the complexity of the case and the workload of the court, with recorded proceedings lasting an average of five years. As a matter of practice, bankruptcy procedures in Vietnam usually take longer than what is provided by law.
Is there a mandatory set-off of mutual debts on insolvency?	Generally there is not mandatory set-off as required by laws during dissolution proceeding.	There is no mandatory set-off. Insolvent entity may set-off its liabilities against those of the creditors provided that such liabilities are derived from the contract concluded prior to the issuance of decision on initiation of bankruptcy process. The set-off must be approved by the asset management officer and asset management enterprise. The asset management officer and asset management enterprise must report the liabilities offsetting to the assigned judge.
Can a debtor continue to carry on business during insolvency proceedings?	Generally no, except for entering into contract for the purpose of dissolution.	Yes, however, the insolvent entity is under the supervision of the judge and asset management officers and/or asset management enterprises.

VIETNAM

	Dissolution	Bankruptcy
OTHER FACTORS		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	From the date of issuance the decision on dissolution, the company and its manager are prohibited by laws to the enterprise and its manager are prohibited from: • Hiding, illegally liquidating assets; • Abandoning or reducing the right to claim debts; • Converting unsecured debts into debts secured on the enterprise's assets; • Signing new contracts, except for the purpose of dissolution; • Granting security over the assets; • Terminating effective contracts; • Raising capital in any shape or form.	As of the date of commencement of bankruptcy procedures, the insolvent enterprise shall be prohibited from undertaking the following activities: • Concealing or disposing of assets; • Paying unsecured debts, except for the unsecured debts arising subsequent to the commencement of bankruptcy procedures and paying wages to employees; • Abandoning or reducing rights to claim debts; and • Converting unsecured debts into debts secured by the assets of the enterprise. Any transactions as set out above shall be invalid and declared so by the court.
What is the order of priority of claims?	Statutory order of priority is as follows: i. Unpaid salaries, severance pay, social insurance as prescribed by law, other benefits of employees according to collective bargaining agreement and signed employment contracts; ii. Tax debts; iii. Other debts. If funds remains, they will owned by the sole proprietorship's owner, members, shareholders, or owner of the company corresponding to their holding of stakes or shares in the company.	Statutory order of priority is as follows: i. Cost of bankruptcy; ii. Unpaid salaries, severance pay, social insurance and health insurance to employees, other benefits according to the labour contracts and collective bargaining agreements; iii. Debts incurred after the initiation of bankruptcy which are used for resuming business operations; and iv. Financial obligations to the government; unsecured debts payable to the creditors on the list of creditors; secured debts which are not paid because the value of collateral is not enough to cover such debts. If funds remain, they will be owned by the shareholders, partners, and/or owners of the company.
Are there any pension liabilities?	No.	No.

VIETNAM

	Dissolution	Bankruptcy
Is it possible to challenge prior transactions?	No.	Yes. The below transactions will be challenged and may be declared invalid by the court. (1) Transactions occurred within six months prior to the date the People's Court issues a decision to commence bankruptcy procedures; and comprising the donation, settlement, payment or transfer of assets or debts not due or unduly remove the assets of the enterprise or cooperative. (2) Transactions with related persons within 18 months prior to the date when the court issued a decision to commence the bankruptcy procedures.

COVID-19

Is state support for distressed businesses available?

Yes. The support from the Government includes:

- **Banks to provide support to customers -** The State Bank of Vietnam reduced interest rate to boost the economic activity. In addition, there are several supports to business, including debt repayment term restructure, exemption and reduction of borrowing interest, debt group maintenance and credit extension for business stabilization. The support will be applicable to business (i) under obligation to repay the principals and/or interest arising between 23 January 2020 and the following day after 03 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 in due time because of decreases in revenues and incomes caused by the impacts of Covid-19 pandemic.
- **Bailout package to support the people affected -** On 9 April 2020, the Prime Minister introduced bailout packages of VND 62,000 billion (approx. USD 2.6 billion) (the "Package") to support people and business affected by Covid-19 pandemic during a three-month period from April to June. The business eligible are impacted employers, household businesses with revenues below VND 100 million (USD4,250) a year. Vietnam Bank for Social Policies will also provide collateral-free, zero-interest loans to employers facing financial difficulties, who have paid at least 50% of salaries in advance to their employees during their suspension of work for the period from April to June 2020, to pay salaries for their furloughed employees for the three-month period.
- **Deferral in payment of tax and land rental -** The Government extends the deadline for paying tax and land rental fee for a number of taxpayers, including companies in sectors of agriculture, transportation, tourism, entertainment, etc, small and extra-small enterprises, and credit institutions providing supporting services for clients affected by the COVID-19 epidemic. The deferral is applicable to payments of value-added tax (VAT) (except for VAT paid upon importation of goods), corporate income tax (CIT), personal income tax (PIT) for households and individuals doing business, and land rental.

VIETNAM	Dissolution	Bankruptcy
	• **Suspension of Social Insurance Contribution to Retirement and Survivorship Funds -** The suspension is applicable to enterprises in service of passenger transport, tourism, accommodation, restaurant and other special industries experiencing difficulties due to COVID-19, which fall under either of the following circumstances: (a) Enterprises cannot provide work for employees, in which the number of employees who are subject to social insurance contribution but must temporarily suspend working is 50% or more of the total number of available employees before the business suspension; or (b) Enterprises suffer losses greater than 50% of the total value of assets due to COVID-19 (excluding land value). • **Suspension of Trade Union Fee Contribution -** The Government allows for the delay of payment of trade union fees during first six months of 2020 until 30 June 2020. Nevertheless, this delay is only applied to enterprises which have at least 50% of the total number of employees who are subject to social insurance contribution but must temporarily suspend working.	
Are dispensations being granted or amendments made (such as restrictions on creditor actions) in light of COVID-19? If so, what are the relevant conditions?	No.	No.
Is further reform of the insolvency regime being discussed/anticipated? If so, give details.	No.	No.

UPDATED MAY 6, 2020

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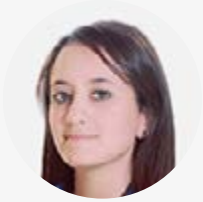

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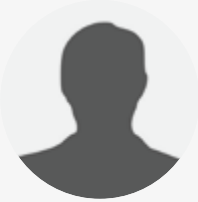

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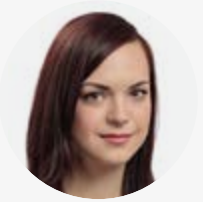

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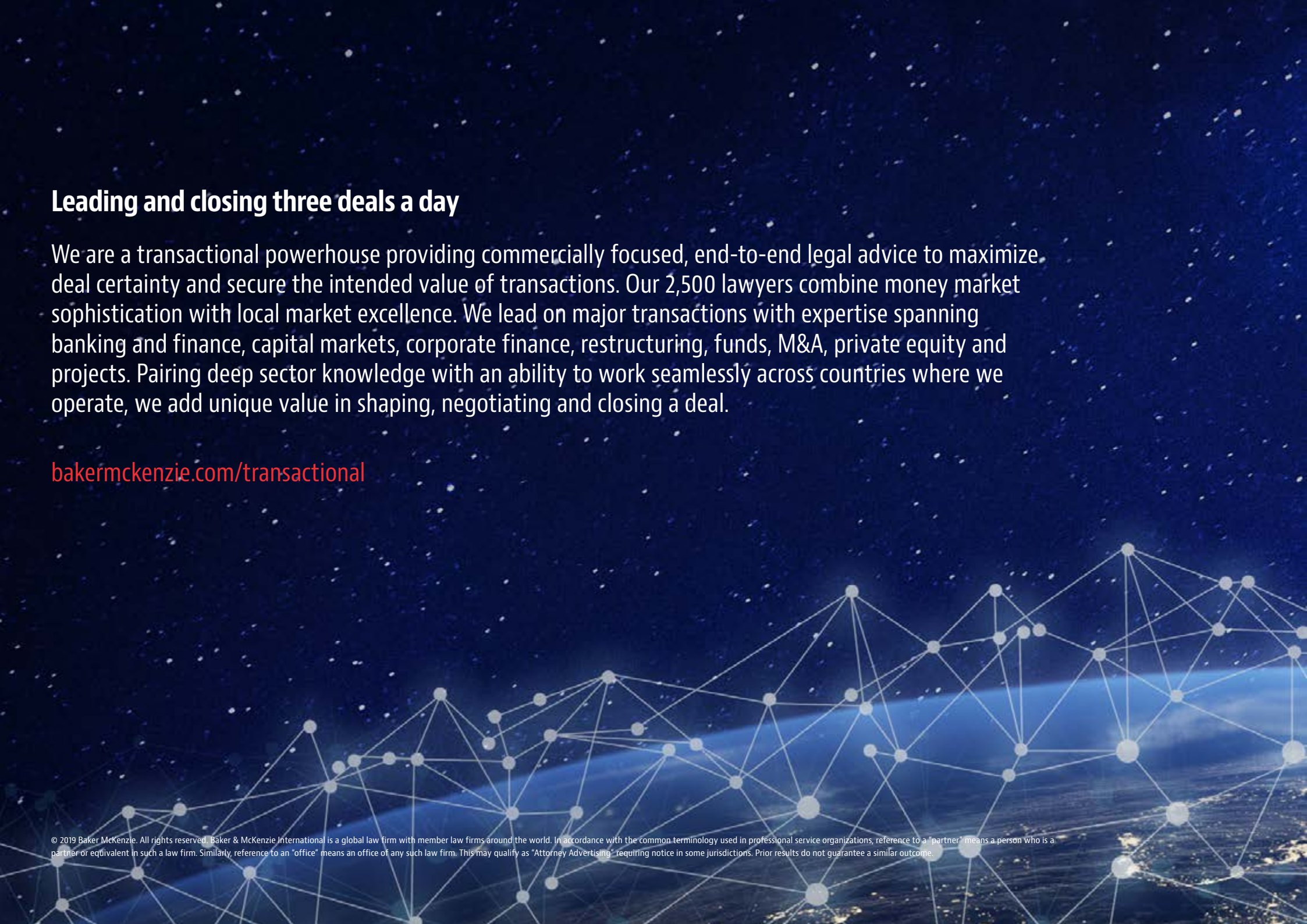

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We are a transactional powerhouse providing commercially focused, end-to-end legal advice to maximize deal certainty and secure the intended value of transactions. Our 2,500 lawyers combine money market sophistication with local market excellence. We lead on major transactions with expertise spanning banking and finance, capital markets, corporate finance, restructuring, funds, M&A, private equity and projects. Pairing deep sector knowledge with an ability to work seamlessly across countries where we operate, we add unique value in shaping, negotiating and closing a deal.

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