Global Restructuring and Insolvency Guide - Vietnam

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

Please select a topic from the menu.

*This content was last reviewed around October 2021.*

# Initial Considerations

## Can you take security over all types of assets, including accounts receivable?

**Dissolution**

Generally, security can be taken over all types of assets, including objects, money, valuable documents or property rights. However, the obligor must own the asset (except for the cases of lien on property or title retention) and must be identified.

**Bankruptcy**

Generally, security can be taken over all types of assets, including objects, money, valuable documents or property rights. However, the obligor must own the asset (except for the cases of lien on property or title retention) and must be identified.

## What is the nature of the insolvency process?

**Dissolution**

This is the dissolution process regulated under Law No. 59/2020/QH14 on Enterprises adopted by the National Assembly on 17 June 2020 ("**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

Failure to maintain the minimum number of members as required by law for six consecutive months without initiating procedures for business conversion

Revocation of Enterprise Registration Certificate

**Bankruptcy**

This is the bankruptcy process regulated by Law No. 51/2014/QH13 on Bankruptcy adopted by the National Assembly on 19 June 2014 ("**Bankruptcy Law**"). The process may be (and in some cases, it shall be)  initiated upon an 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 a petition for a 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 for a company to file a case in this jurisdiction?

**Dissolution**

There is no solvency requirement. The company can voluntarily be dissolved. However, a company cannot be voluntarily dissolved if it is unable to settle its outstanding debts. In such a case, it may need to go through a bankruptcy proceeding.

**Bankruptcy**

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 the commencement of bankruptcy proceedings.

## Is there a requirement to demonstrate COMI ("centre of main interests") for a company to file a case in this country?

**Dissolution**

Yes, to define the competent business registration authority and tax authority, the company should submit dossiers for dissolution.

**Bankruptcy**

Yes, in order to define the jurisdiction of the court.

## Is restructuring of both secured and unsecured claims possible?

**Dissolution**

N/A

**Bankruptcy**

Yes.

## Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?

**Dissolution**

No.

**Bankruptcy**

There is no classification for shareholders.

Creditors are classified as (1) secured creditors, (2) partially secured creditors, or (3) unsecured creditors.

## Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?

**Dissolution**

In case of voluntary dissolution, the board of members of a limited liability company and a general meeting of shareholders of the joint-stock company must pass a resolution on the company's dissolution.

The resolution will be passed if it receives an affirmative vote representing 75% of the total capital contribution of attending members (for a limited liability company) and 65% of total votes of attending shareholders (for a joint stock company), unless the charter of the enterprise stipulates otherwise (i.e., a different voting threshold).

**Bankruptcy**

No, shareholders' vote is not required to initiate the bankruptcy process.

## Is there an ability to bind minority dissenting creditors (i.e., cramdown)?

**Dissolution**

No, however, creditors can object to the voluntary dissolution of a company. This is done by filing a petition to the court.

**Bankruptcy**

Yes. The resolution of the creditor's meeting can 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.

# Commencing the Process

## Who can commence?

**Dissolution**

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 a general meeting of shareholders of the joint-stock company can decide on the volunteer dissolution of the company and submit a notice to the Business Registration Office.

The Business Registration Office can revoke the Enterprise Registration Certificate.

A competent court can decide to liquidate a company.

**Bankruptcy**

The following parties can file a petition for bankruptcy process at a 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, chairperson of the board of management of a joint-stock company, chairperson of the board of members of a multimember 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?

**Dissolution**

The resolution to decide the company's voluntary dissolution must be passed by the board of members or a general meeting of shareholders of the company.

**Bankruptcy**

Not required. Shareholders voting is not required to initiate the bankruptcy process.

## Is there an ability to consolidate group estates?

**Dissolution**

No. Assets and liabilities of a group of companies are not consolidated.

**Bankruptcy**

No. Assets and liabilities of a group of companies are not consolidated.

## Is there any court involvement?

**Dissolution**

Yes, in case the company should be dissolved upon the decision of the court.

**Bankruptcy**

Yes.

The judge shall make a decision on the initiation of a bankruptcy process or refusal to initiate a 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.

## Who manages the debtor?

**Dissolution**

The owner or the board of members of a limited liability company, or the board of directors of a joint-stock company that  controls the company

**Bankruptcy**

The insolvent entity shall keep running the business operates 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 the bankruptcy process is made.

If the insolvent entity is perceived as 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 the creditors' meeting or the asset management officers and/or asset management enterprises.

## What is level of disclosure of process to voting creditors?

**Dissolution**

The creditors must be informed about the decision on the company's dissolution. 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 payment method and the method and deadline for the settlement of creditors' complaints.

**Bankruptcy**

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 evidence related to their lawful rights and interests to provide such documents and evidence so that they can hand them over to the People's Court. The individual, agency or organization has an obligation to sufficiently provide the documents and evidence within 15 calendar days from the receipt of the creditors' request.

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

**Dissolution**

Generally, the dissolution of all companies in Vietnam must be subject to the Enterprise Law. However, in case the entity is a credit institution, its dissolution will also be subject to the Law on Credit Institution. That said, the credit institution can voluntarily be dissolved in the following cases:

If it can settle all debts and the dissolution is approved by the State Bank of Vietnam.

The term of operation is expired without extension.

The license issued by the State Bank of Vietnam is revoked.

**Bankruptcy**

In case the debtor is a state-owned enterprise or involved in defense or service of the public interest, the debtor organization may receive funding for recovery from the state to ensure its ongoing solvency.

In case the debtor is a credit institution 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?

**Dissolution**

The creditors cannot commence the dissolution process.

**Bankruptcy**

Following are the main stages and relevant time frame as stipulated under the Bankruptcy Law to commence the bankruptcy procedure:

Acceptance of jurisdiction over the petition: around two months from the date of submission of the petition

Issuance of the decision on the commencement of insolvency proceedings: 30 calendar days from the acceptance date

# Effect of Process

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

**Dissolution**

The managers of the company will keep their managerial titles. However, upon the decision on the dissolution of the company, the company is subject to several restrictions by laws in signing new contracts, mortgage assets, sale of assets, etc.

**Bankruptcy**

The insolvent entity shall keep running the business operates under the supervision of the judge and asset management officers and/or asset management enterprises after the decision on the initiation of the bankruptcy process is made.

If the insolvent entity is perceived as 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 the creditors' meeting or the asset management officers and/or asset management enterprises.

## What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?

**Dissolution**

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

**Bankruptcy**

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.

Transactions of an insolvent enterprise 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 invalid.

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

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.

## Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?

**Dissolution**

No.

**Bankruptcy**

There is no specific provision allowing the debtor to obtain credit after commencement of bankruptcy proceedings (post-commencement credit) to finance its ongoing needs during the proceedings.

## Can procedure be used to implement a debt-to-equity swap?

**Dissolution**

No.

**Bankruptcy**

Yes, during the company's business recovery, the creditors can buy shares of the insolvent company to become shareholders.

## Are third party releases available?

**Dissolution**

No.

**Bankruptcy**

No.

## Are the proceedings recognised abroad?

**Dissolution**

It depends on the jurisdiction where the recognition is sought.

**Bankruptcy**

It depends on the jurisdiction where the recognition is sought.

## Has the UNCITRAL Model Law been adopted?

**Dissolution**

No.

**Bankruptcy**

No.

## Can a debtor continue to carry on business during insolvency proceedings?

**Dissolution**

Generally no, except for entering into a contract for the purpose of dissolution.

**Bankruptcy**

Yes, however, the insolvent entity is under the supervision of the judge and asset management officers and/or asset management enterprises.

# Other Factors

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

**Dissolution**

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

**Bankruptcy**

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

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?

**Dissolution**

Statutory order of priority is as follows:

Unpaid salaries, severance pay, social insurance as prescribed by law, other benefits of employees according to collective bargaining agreement and signed employment contracts

Tax debts

Other debts

If funds remain, they will be owned by the sole proprietorship's owner, members, shareholders,  or company owner corresponding to their holding of stakes or shares in the company.

**Bankruptcy**

The statutory order of priority is as follows:

Cost of bankruptcy

Unpaid salaries, severance pay, social insurance and health insurance to employees, other benefits according to the labor contracts and collective bargaining agreements

Debts incurred after the initiation of bankruptcy that is used for resuming business operations

Financial obligations to the government; unsecured debts payable to the creditors on the list of creditors; secured debts that are not paid because the value of the 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.

## Do pension liabilities have any priority over other unsecured claims?

**Dissolution**

No. This is not applicable under Vietnam laws as pension liabilities will come from social insurance funds, which are controlled by the government.

**Bankruptcy**

No. This is not applicable under Vietnam laws as pension liabilities will come from social insurance funds, which are controlled by the Government.

## Is it possible to challenge prior transactions?

**Dissolution**

No.

**Bankruptcy**

Yes. The below transactions will be challenged and may be declared invalid by the court:

Transactions that 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 enterprise's assets or assets cooperative

Transactions with related persons within 18 months prior to the date when the court issued a decision to commence the bankruptcy procedures.

©Copyright © 2024 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.