Global Restructuring and Insolvency Guide - Taiwan

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*This content was last reviewed around February 2022.*

# Initial Considerations

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

**Bankruptcy process**

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 a company's property. This means that security interests over fluctuating assets may be subject to certain requirements or limitations. Accounts receivable would generally be secured by way of assignment.

## What is the nature of the insolvency process?

**Bankruptcy process**

If a debtor becomes insolvent and cannot repay its debts, its 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 procedures will apply.

## What is the solvency requirement for a company to file a case in this jurisdiction?

**Bankruptcy process**

Under Company Law, if a company's assets 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 public company may avoid bankruptcy if a moratorium can be agreed and entered with creditors and the company has petitioned the court for reorganization pursuant to the Company Act.

Under Bankruptcy Law, if a company is unable to pay its debts, the company, its creditors and certain other interested parties may apply for adjudication of bankruptcy.

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

**Bankruptcy process**

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?

**Bankruptcy process**

Yes, if the creditors agree.

Prior to bankruptcy, this is contractual and subject to the agreement of all creditors.

In bankruptcy, 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.

## Is there a classification of creditors and shareholders?

**Bankruptcy process**

Creditors: secured versus 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 versus ordinary shareholders

Preference-share shareholders may have priority over ordinary-share shareholders if so provided in terms of the preference shares and the company's articles of incorporation.

## Is there a requirement for voting approvals by shareholders?

**Bankruptcy process**

No.

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

**Bankruptcy process**

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 a 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 the creditors that the decision is contrary to the interests of creditors.

# Commencing the Process

## Who can commence?

**Bankruptcy process**

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 debts, the company's board of directors must file a bankruptcy petition immediately. If 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 shareholder's consent required to commence proceeding?

**Bankruptcy process**

No.

When the insolvent company initiates the bankruptcy proceeding, the decision to file for bankruptcy does not require shareholders' consent.

## Is there an ability to consolidate group estates?

**Bankruptcy process**

No.

## Is there any court involvement?

**Bankruptcy process**

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?

**Bankruptcy process**

The bankruptcy trustee, typically a CPA, lawyer or creditor, oversees and manages the sale and distribution of the bankrupt's properties.

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

**Bankruptcy process**

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 reorganisation proceedings, and what legislation applies to them?

**Bankruptcy process**

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?

**Bankruptcy process**

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 debtor remain in possession with continuation of incumbent management control?

**Bankruptcy process**

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)? Is the stay or moratorium worldwide?

**Bankruptcy process**

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.

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

**Bankruptcy process**

No.

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

**Bankruptcy process**

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 no proceeding to implement a debt-to-equity swap.

## Are third party releases available?

**Bankruptcy process**

No.

## Are the proceedings recognised abroad?

**Bankruptcy process**

This depends on the insolvency regimes in the relevant overseas jurisdictions.

## Has the UNCITRAL Model Law been adopted?

**Bankruptcy process**

No.

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

**Bankruptcy process**

No.

# Other Factors

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

**Bankruptcy process**

A responsible person (including the director, supervisor and managers) of a company is required to 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?

**Bankruptcy process**

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 as follows:

The bankruptcy trustee's fees, costs and debts incurred in the administration, realization and distribution of the bankruptcy estate

Land value incremental tax, land value tax, house tax and VAT for compulsory execution

Fee for compulsory execution

Maritime liens

Mortgages and other perfected security interests

Employee claims – up to six months' 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

Tax payments, including income tax and normal VAT

Other claims

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

**Bankruptcy process**

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?

**Bankruptcy process**

Yes.

After the adjudication of bankruptcy, the bankruptcy administrator may request the court to void 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 transfer 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.

 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.

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