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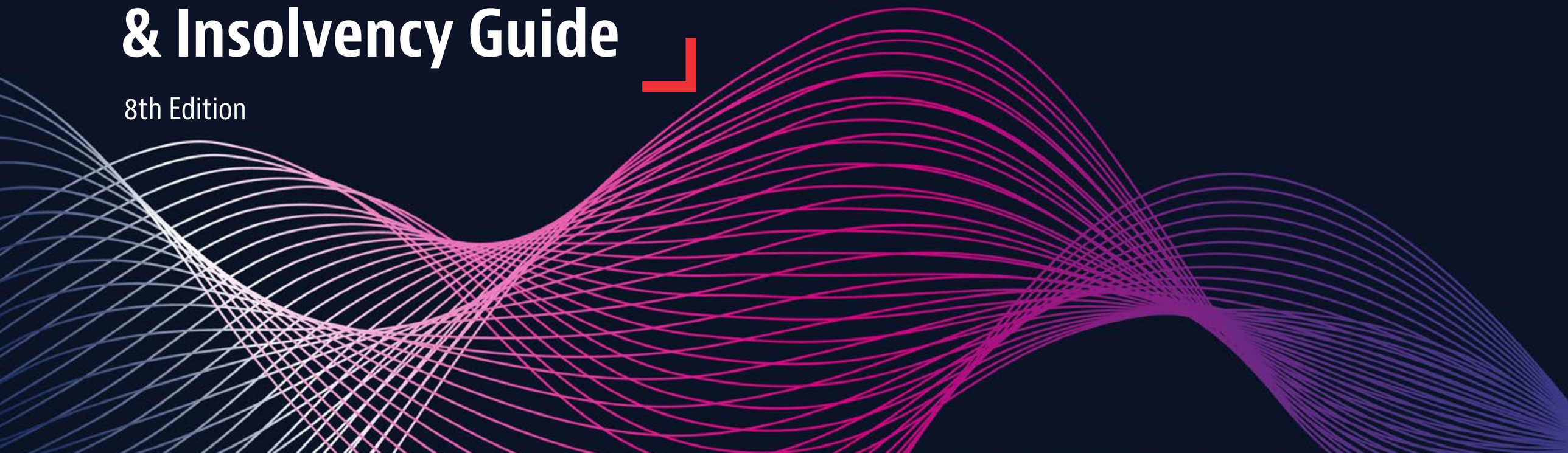
Global Restructuring & Insolvency Guide

8th Edition



Welcome to the 8th 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.

Our lawyers have been advising on some of the largest and most complex multi-jurisdictional 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 each chapter.

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

For any inquiries or assistance regarding the Global Restructuring & Insolvency Guide, please contact us.

** Please see each chapter for the date last updated.*

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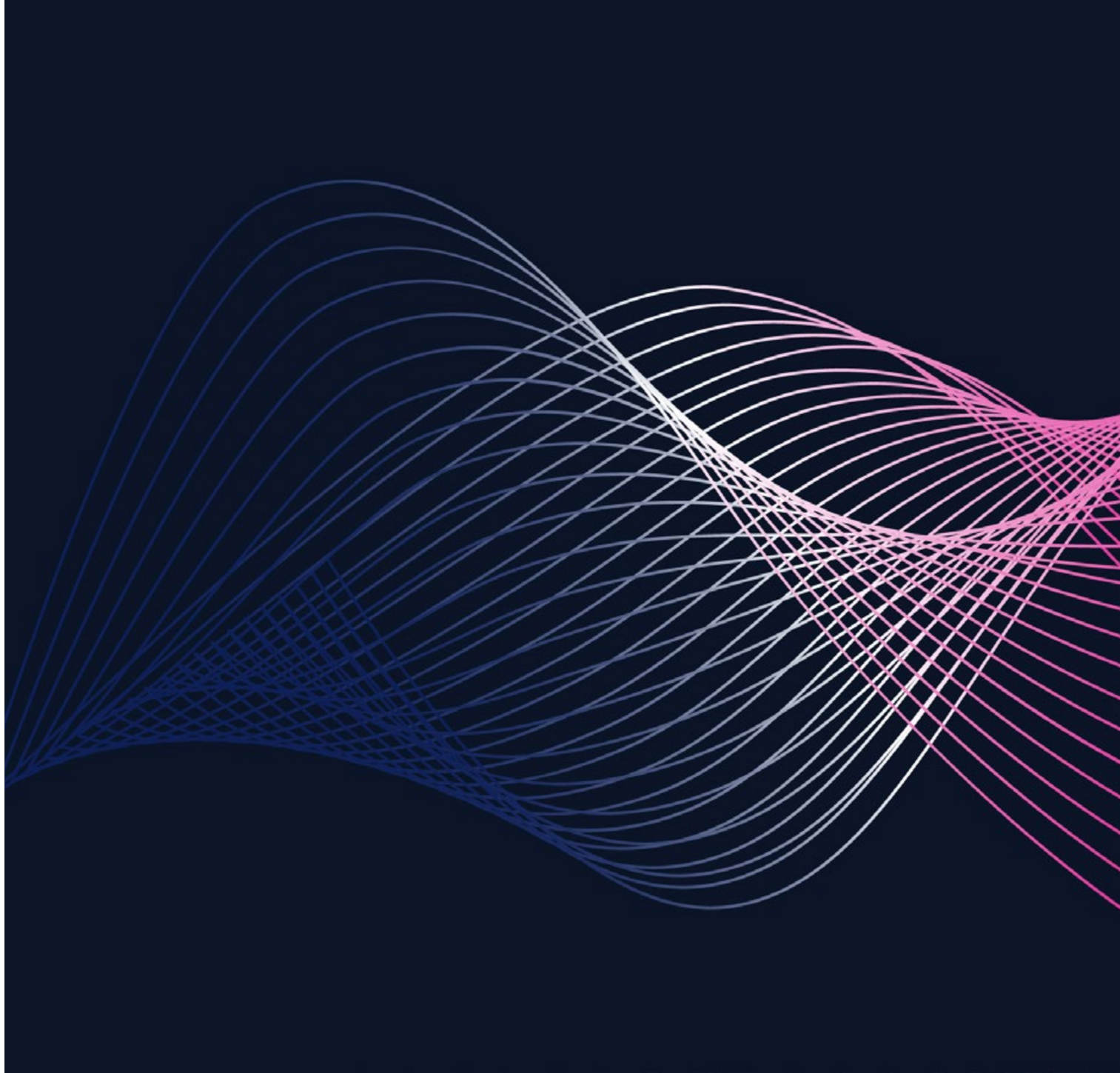

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	Extrajudicial voluntary agreement	Reorganization proceedings	Liquidation bankruptcy
Initial considerations			
Can you take security over all types of assets, including accounts receivable?	Generally yes, before filing for the reorganization or the ruling setting forth the start of the liquidation bankruptcy.	Once reorganization proceedings begin, no further security interests can be granted over the debtor's assets for credits due before the beginning of the reorganization proceedings. The debtor can grant security interests for new creditors after reorganization proceedings commence.	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 insolvency process?	Insolvency is an alternative to 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.	The court process leads to a composition agreement with creditors 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; the debtor's company may even file for bankrupcy. 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.
What is the solvency requirement for a company to file a case in this jurisdiction?	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 a shareholders' meeting must ratify such resolution 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.

	Extrajudicial voluntary agreement	Reorganization proceedings	Liquidation bankruptcy
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	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
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	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.	The same as the extrajudicial voluntary agreement process.	N/A
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	Shareholder approval 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. After filing 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).	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. 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).	If the debtor files for its own bankruptcy, the same approval as in the reorganization proceedings is required.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	If the court approves the agreement, 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 court approves the agreement, 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 debtor's legal representative can commence the process with the previous order of the board of directors or the administrative body of the company.	The debtor's legal representative 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.

	Extrajudicial voluntary agreement	Reorganization proceedings	Liquidation bankruptcy
Is shareholder's consent required to commence proceeding?	Shareholders' approval 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.
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 the extrajudicial voluntary agreement with the court by stating the facts on which they base the group's existence 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 reorganization proceedings by stating the facts on which they base the group's existence 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 group's existence 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 level of disclosure of 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 that provided by the debtor, the trustee has to file its report before appointing the agreement so that creditors know the debtor's financial situation.	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 debtor's financial situation.
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.

	Extrajudicial voluntary agreement	Reorganization proceedings	Liquidation bankruptcy
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 complying with all the requirements to file the agreement in 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 complying with all the requirements to file the agreement with the court. Generally, a few weeks.	It depends on the time spent 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 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)? Is the stay or moratorium worldwide?	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 automatic stay prohibits the commencement or continuation of litigation against the debtor or an attempt by a creditor to foreclose the property of the debtor.	N/A
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	No	No	No
Can procedure be used to implement 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

	Extrajudicial voluntary agreement	Reorganization proceedings	Liquidation bankruptcy
Has the UNCITRAL Model Law been adopted?	No	No	No
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 the 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 trustee's surveillance and the provisory creditors committee. However, the administration is restricted and certain acts are forbidden, as follows: ■ The debtor shall not dispose of its assets without consideration or perform an act that affects or modifies the creditors' situation. ■ A judicial authorization is required for the following: – 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 – The grant of liens – Acts beyond the ordinary administration of the business 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 abovementioned limitations 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.	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.

	Extrajudicial voluntary agreement	Reorganization proceedings	Liquidation bankruptcy
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 regard 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; (d) mortgages and pledges over the assets they secure, etc. With regard 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.	The same as reorganization proceedings.
Do pension liabilities have any priority over other unsecured claims?	No	No	The bankruptcy declaration by itself does not imply the termination of employment agreements. Termination will occur 60 days after the bankruptcy declaration, provided the business is no continuation 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.	The same as reorganization proceedings.

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Australia

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
Initial considerations					
Can you take security over all types of assets, including accounts receivable?	While not typically a part of the implementation of a creditor's scheme of the arrangement, more generally, a creditor can take security over all types of assets, including accounts receivable. 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 accounts receivable. 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.	Yes. A creditor is able to take security over all types of assets, including accounts receivable. This is most commonly effected through a general security deed, subsequently registered on the Personal Property Securities Register[1] 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 the column on Receivership in this section).	Yes. A creditor is able to take security over all types of assets, including accounts receivable. 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 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).	Yes. A creditor is able to take security over all types of assets, including accounts receivable. 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 PAP of the grantor of the security. Doing so opens up the availability of private receivership as a recovery pathway (see the column on Receivership in this section).

1 The Personal Property Securities Register is enabled under the Personal Property Securities Act 2009 (Cth).
2 The Personal Property Securities Register is enabled under the Personal Property Securities Act 2009 (Cth).
3 Ibid.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
What is the nature of the insolvency 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 the arrangement, assuming the requisite majority has passed it at the meeting or meetings of affected creditors ■ 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 (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 the reduction of the secured debt. A court may also appoint a receiver. Procedurally, the appointment of a receiver is affected 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. A receiver must be a registered liquidator with ASIC. Additionally, a range of circumstances disqualifying a person from accepting an appointment as a receiver 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.	A winding-up (also known as 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 order of the Federal Court of Australia or the Supreme Courts of the States and Territories of Australia. 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. The statutory presumption arises where a company fails to comply or apply to a court to set aside the statutory demand within 21 clear days of the statutory demand being issued. 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.	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 either: ■ Maximizes the chances of the company, or as much as possible of its business, continuing in existence ■ If it is not possible for the company or its business to continue in existence, it results in a better return for the company's creditors and shareholders than would result from an immediate winding-up of the company 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.	In a restructuring, eligible companies work with a Restructuring Practitioner to develop and propose to creditors a restructuring plan. Restructuring is a debtor-in-possession regime, with control of the company remaining with the directors throughout the process. A Restructuring Practitioner must be registered with the ASIC as a registered liquidator. A company will be eligible to use the restructuring process in the following scenarios: ■ Its total liabilities do not exceed $1 million. ■ No current director, or director from the preceding 12 months, has also been a director of another company that, in the preceding seven years, has been through a restructuring. ■ The company itself has not undertaken a restructuring process within the last seven years. ■ The company is not already under restructuring or subject to any other form of external administration. The company has 20 business days after the appointment of the Restructuring Practitioner to prepare with the assistance of the Restructuring Practitioner and sign a restructuring plan. This period can be extended by the Restructuring Practitioner once (and by no more than ten business days) or by the Court on application by the company.

Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
		A creditors' voluntary winding-up usually commences in either of these circumstances: ■ Pursuant to a special resolution of the company's shareholders in circumstances where the directors of the company make no declaration of solvency ■ As is now very common, by resolution of creditors at the second meeting of creditors held in the company's voluntary administration (see the column on Voluntary administration/deed of company arrangement in this section) 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.	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 do the following: ■ 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) ■ 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.	The restructuring plan must ensure the following: ■ Identify what company property is to be dealt with under the restructuring plan and how that property will be dealt with. ■ Provide for the remuneration of the Restructuring Practitioner for the restructuring plan. ■ Be accompanied by a restructuring proposal statement, which must include a schedule of debts and claims for each of the creditors. ■ Specify the date on which the restructuring plan was executed. ■ A secured creditor will only be a creditor and bound by the plan, to the extent the value of its claim exceeds its security. To put a restructuring plan to creditors, a company must have (or substantially have): ■ paid all employee entitlements that are payable; and ■ given all returns, notices, statements, applications or other documents as required by taxation laws within the meaning of the Income Tax Assessment Act 1997 (Cth). The plan is put to creditors by the Restructuring Practitioner sending a copy of it to as many creditors as reasonably practicable. Eligible creditors are asked to vote in writing on the restructuring plan and verify or dispute the company's assessment of the creditor's admissible debt or claim.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
					Creditors typically have 15 business days from the date of the proposed restructuring plan to vote. If a creditor disagrees with the company's assessment of its debt or claim, it should give notice of that disagreement to the Restructuring Practitioner within 5 business days of becoming aware of the restructuring plan. The Restructuring Practitioner must adjudicate on any dispute as to the value of a creditor's debt or claim and notify the company and the creditor of its recommendation (which may include varying the schedule of claims). If during the 15 day voting period (which may be extended in some circumstances by the Restructuring Practitioner or the Court), a majority of creditors in value vote to accept the restructuring plan, the plan becomes binding. An accepted restructuring plan becomes binding on the company, its officers, members and creditors to the extent of their admissible debts or claims (with some exceptions). If the restructuring plan terminates on being performed, the company can retain any property not required to be distributed to creditors under the restructuring plan. The company is then released from all admissible debts and claims that arose before the restructuring commenced.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
What is the solvency requirement for a company to file a case in this jurisdiction?	There is no insolvency requirement 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.	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 the discussion above under the heading 'What is the nature of the process' on these two different procedures.	If the directors of the debtor company appoint an administrator, they must be of the opinion that the company is insolvent or likely to: ■ become insolvent at some future time. If a secured creditor appoints an administrator, this will be where their security has ■ become enforceable, often by reason of a payment default. If a liquidator appoints an administrator, it will be in an insolvent liquidation where creditor claims cannot be paid in full.	If the directors of the debtor company appoint a Restructuring Practitioner to administer a restructuring, they must be of the opinion that the company is insolvent or likely to become insolvent at some future time.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	Broadly, only Australian incorporated companies or foreign companies that are registered in Australia may be the subject of a scheme of arrangement. Separately, Australia is a 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 in the question "Has the UNCITRAL Model Law been adopted?" under the section "Effect of process" in connection with cross-border situations.	No. Any corporation (domestic or foreign) can have its Australian assets placed into Australian-regulated receivership. Separately, Australia is a 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 in the question "Has the UNCITRAL Model Law been adopted?" under the section "Effect of process" in connection with cross-border situations.	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 a 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 in the question "Has the UNCITRAL Model Law been adopted?" under the section "Effect of process" in connection with cross-border situations.	No, but only Australian incorporated companies may be placed into Australian voluntary administration. Separately, Australia is a 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 in the question "Has the UNCITRAL Model Law been adopted?" under the section "Effect of process" in connection with cross-border situations.	No, but only Australian incorporated companies may be placed into Restructuring. Separately, Australia is a 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 in the question "Has the UNCITRAL Model Law been adopted?" under the section "Effect of process" in connection with cross-border situations.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
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 many 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.	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 restructuring. However, a DOCA will only bind a secured creditor 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 secure and unsecured debts with a contemporaneous receivership and voluntary administration.	Generally, no. Restructuring is focused on the debts of unsecured creditors but will apply to secured creditors only to the extent the value of their claim exceeds its security, or if they otherwise accept the proposal and it is expressed to bind them.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	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.	Yes in respect of treatment in the liquidation, but generally no in respect of voting rights. Classifications of stakeholders, in terms of ranking for distributions from the liquidation estate, are (in very general terms) as follows: ■ 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.	No in respect of voting rights, but potentially yes in how claims are treated under a DOCA. 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) as follows: ■ 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.	No. Restructuring only applies to the claims of unsecured creditors because of the following: ■ The restructuring requires payments of all, or substantially all, priority unsecured creditors' (employees) debts prior to the commencement of the restructuring. ■ Secured creditors are only creditors to the extent the value of their claim exceeds its security (at which point they are unsecured creditors) or because they accept the restructuring plan.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	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	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.	No
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	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.	Yes. The liquidation procedure binds all creditors (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).	Yes. A restructuring binds the company, its creditors, officers, shareholders and the Restructuring Practitioner; however, secured creditors (in respect of the assets subject to their security) can only be bound by a restructuring plan if they voted in favor of it (and otherwise remain free to enforce their security).
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.	Voluntary liquidation can be commenced by a special resolution of the company's shareholders. Also, as noted above, a creditors' voluntary liquidation is often commenced at the second meeting of creditors in the company's voluntary administration. 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 company's rehabilitation (commonly a creditor, director or shareholder but also potentially a third party).	The directors of the company may appoint a Restructuring Practitioner. Once the company is under restructuring, the company can put a restructuring plan to its creditors.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
Is shareholder's consent required to commence proceeding?	No	No	Shareholder 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	No
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. However, it is common 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 against the parent and its subsidiaries.	No	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.	No.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
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 affecting the creditors' scheme of approval ("**Second 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 any act, omission or decision of a receiver can appeal to the court.	An involuntary court-ordered liquidation is commenced by an order of the court and is then supervised by the court. 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 any 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 any 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.	The court has no required role in the commencement of a restructuring, or in the conduct of the restructuring or any restructuring plan. However, the court has very broad powers to make orders in connection with a restructuring on application by a Restructuring Practitioner, director or creditor.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
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 the management of the company's assets 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 liquidation takes place concurrently with receivership, under the control of a separate administrator or liquidator. In the case of 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, the receiver will generally 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 and the continued performance by the company of its contractual obligations) or in connection with the sale of assets are appropriately conducted by the receiver.	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).	The directors continue to manage the company's affairs and have permission to cause the company to enter into transactions or dealings in the ordinary course of the company's business or otherwise, with the consent of the Restructuring Practitioner.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
		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 level of disclosure of 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, identifies the 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	There are various statutory reports to creditors in connection with the liquidation generally. If creditors are asked to approve particular steps in 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 following: ■ 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 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 accomplishes the following: ■ Discusses the company's business, property, affairs and financial circumstances and sets out the details of any proposed DOCA to be put to creditors.	Creditors are provided with a proposed restructuring plan, which must accomplish the following: ■ Identify what company property is to be dealt with under the restructuring plan and how that property will be dealt with. ■ Provide for the remuneration of the Restructuring Practitioner for the restructuring plan. ■ Be accompanied by a restructuring proposal statement, which must include a schedule of debts and claims for each of the creditors. ■ Specify the date on which the restructuring plan was executed. The Restructuring Practitioner must also give creditors a declaration which states whether, or whether not, the Restructuring Practitioner believes the following on reasonable grounds: ■ The company meets the eligibility criteria to undertake a restructuring. ■ The restructuring proposal statement has set out all the information required.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
				■ 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 is 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.	
If the restructuring plan is made, the company is likely to be able to discharge the obligations created by the restructuring plan as and when they become due and payable; What entities are excluded from customary insolvency or reorganization proceedings, and what legislation applies to them?	Australia has special regulations on the financial distress of banks (under the Banking Act 1959 (Cth)) and insurance companies (under the Insurance Act 1973 (Cth)).	Australia has special regulations on the financial distress of banks (under the Banking Act 1959 (Cth)) and insurance companies (under the Insurance Act 1973 (Cth)).	Australia has special regulations on the financial distress of banks (under the Banking Act 1959 (Cth)) and insurance companies (under the Insurance Act 1973 (Cth)).	Australia has special regulations on the financial distress of banks (under the Banking Act 1959 (Cth)) and insurance companies (under the Insurance Act 1973 (Cth)).	Australia has special regulations on the financial distress of banks (under the Banking Act 1959 (Cth)) and insurance companies (under the Insurance Act 1973 (Cth)).

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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). Receivership does not impose any moratorium on such efforts.	In the case of an involuntary, court-ordered liquidation, the process of having a winding-up 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.	N/A.
Effect of process					
Does debtor remain in possession with continuation of incumbent management control?	Yes, the company continues under the control of its board of directors. If formal voluntary administration or liquidation processes have already commenced, 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 secured creditor appoints the receiver, 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).	No. Control of the debtor company passes to the liquidator.	No. Control of the debtor company passes to the administrator.	Yes. The company continues under the control of its directors.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
What is the stay/ moratorium regime (if any)? Is the stay or moratorium worldwide?	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. The relevant legislation, which provides for stays involving steps taken against Australian incorporated companies, is expressed to have an extraterritorial effect.	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 entirety of the company's assets and undertaking (which is not always the case). The relevant legislation, which provides for stays involving steps taken against Australian incorporated companies, is expressed to have an extraterritorial effect.	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. This stay applies to Australian courts only.	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 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," is 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.	During the period of the restructuring: ■ 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 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 Restructuring Practitioner or order of the court. 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," is 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.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
				The administrator is not able to deal with property subject to a security interest (including property that is 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. Where the administrator uses retention of title or PMSI property 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. In broad terms, there is now a general moratorium on contract counterparties seeking to terminate contracts with the company based on the basis of the company being in voluntary administration. The relevant legislation, which provides for stays involving steps taken against Australian incorporated companies, is expressed to have an extraterritorial effect.	The administrator is not able to deal with property subject to a security interest (including property that is 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. 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 restructuring plan is subject to a moratorium on claims of creditors being pursued other than by the restructuring plan process. There is 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.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
The relevant legislation, which provides for stays involving steps taken against Australian incorporated companies, is expressed to have an extraterritorial effect. Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	No.	No.	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 superpriority, although subject to the rights of existing secured creditors.	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.	Yes, in certain, very limited circumstances (although this is very rarely used).	Yes, through a DOCA (although there are no special statutory provisions for a debt-to-equity swap).	While the restructuring regime contains some of the mechanisms used in a voluntary administration to facilitate a debt-to-equity swap, the process is new. The extent to which it could be used in this way is yet to be tested.
Are third-party releases available?	Yes, schemes can be used to release creditors' claims against both the company as well as third parties.	No	No	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).	Yes, under the Model Law.	Yes, under the Model Law.	The regime is new, and the extent to which it will be recognized is yet to be tested. However, in theory, it should be capable of being recognized.
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)).	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)).	Yes. Australia adopted the Model Law in 2008 (enacted in the Cross-Border Insolvency Act 2008 (Cth)).

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
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 the arrangement, provided no formal insolvency proceedings are on foot.	The receiver often carries on the business to the extent necessary to realize the secured assets.	A liquidator will only carry on a company's business so far as 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 administrator may shut down the business or parts of it during the voluntary administration phase.	Yes, Restructuring is a debtor-in-possession process.
Other factors					
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 the 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	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	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.	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 when dishonesty is involved. There are only limited defenses available to an insolvent trading claim, including that, when the debt was incurred, the director:

Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
■ 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 from 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.	■ 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 from 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.	■ 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 from 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.	■ 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 from 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).	■ 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 from 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 may be a reason for directors to commence a restructuring. A director's duty to prevent insolvent trading does not apply in respect of debts incurred during the restructuring phase and in the ordinary course of the company's business.

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
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 — are statutorily subordinated to specified employee claims that qualify for priority in a winding-up, being wages and superannuation, leave and redundancy entitlements.	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 an 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. 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.	Adjudication and payment of creditors do 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.	There is no priority of payments to particular creditors under a Restructuring Plan. Only unsecured creditors are eligible for receivable paid on a pari passu basis. Secured creditors only participate to the extent the value of their claim exceeds their security, at which point they become unsecured creditors. Employee entitlements must be fully paid as a condition of putting the Restructuring Plan to creditors.
Do pension liabilities have any priority over other unsecured claims?	No	No	No	No	No

	Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
Is it possible to challenge prior transactions?	No.	No.	The liquidator's primary tools for recovery are voidable transactions (which include unfair preferences and uncommercial transactions) and insolvent trading claims (touched on above). Other courses of action are 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 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 the following: ■ 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.	No. Restructuring and a restructuring plan are rehabilitation procedures and are not concerned with challenges to prior transactions.

- It 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.
- It 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 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 less than its value (such as in phoenix company conduct), the concept is not so limited.

Creditors' scheme of arrangement	Receivership	Liquidation	Voluntary administration/deed of company arrangement	Restructuring
		There are potential defenses to an uncommercial transaction claim, most commonly if the defendant can establish the following: ■ It became a party to the transaction in good faith. ■ It 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. ■ It 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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Austria

Remark: Austria is a member of the European Union. Please refer to the European Union chapter to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. Austria has implemented the European Restructuring Directive in a law called (ReO,) which entered into force in July 2021. Please see below in "Restructuring regime under ReO" for more details.

	Regular insolvency proceedings	Restructuring regime under European Restructuring Directive (ReO)
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	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 to create a security interest 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.	Within the restructuring regime under the ReO, the same fundamental principles of Austrian security law apply.
What is the nature of the insolvency process?	General and procedural rules on insolvency proceedings are set forth in the Austrian Insolvency Code (Insolvenzordnung — IO). Typically, a court-appointed administrator controls the debtor's assets. However, in some cases, the debtor may retain control over its assets but would be supervised by an administrator (debtor in possession). Insolvency proceedings aim to limit the creditors' losses in the event of insolvency. Relatively early on, the administrator will be required to assess whether the debtor's business operations 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 (e.g., rent and utilities), which has to be considered when deciding whether or not to continue the business operations. As an alternative to the liquidation of the debtor's assets, 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: ■ 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.	The preventive restructuring framework ("Framework") introduced by the ReO aims at facilitating restructuring efforts of debtors, which are likely to become insolvent, but without the necessity to initiate formal (and public) insolvency proceedings. The core element of the Framework is the introduction of a new pre-insolvency procedure for the preventive restructuring of companies in financial difficulties (so-called "restructuring procedure" — Restrukturierungsverfahren). During a Restructuring Procedure, the debtor remains in charge of the business. A court-appointed restructuring professional (Restrukturierungsbeauftragter) is only involved in the application of the debtor or in sensitive cases (e.g., if a debtor in possession leads to disadvantages for the creditors or if it is foreseeable that the restructuring objective can only be achieved by way of a cross-class cramdown). The Framework provides for a number of restructuring measures which are to be used by the debtor in its own discretion during the Restructuring Procedure, such as the restructuring plan, a court-ordered enforcement stay ("moratorium"), and new financial support provided by an existing creditor or a new creditor subject to prior court approval (so-called interim financing). Additionally, the debtor can apply for a simplified restructuring procedure when only financial creditors are affected and a broad majority of the financial creditors have already approved the Restructuring Plan.

	Regular insolvency proceedings	Restructuring regime under European Restructuring Directive (ReO)
	■ 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.	
What is the solvency requirement for a company to file a case in this jurisdiction?	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 (drohende Zahlungsunfähigkeit) is given (meaning that the debtor is still able to meet payment obligations but has reason to believe that this might change).	**Restructuring requirement** Likelihood of insolvency is required, meaning that the existence of the debtor would be threatened without restructuring, particularly in case of imminent illiquidity. Likelihood of insolvency is in particular presumed if: (i) the debtor is facing imminent illiquidity; or (ii) the debt-to-equity ratio falls below 8% and the national debt amortization period exceeds 15 years.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	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.	Yes, in line with the procedural rules of an insolvency proceeding.
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 the relevant security does not cover secured claims, they are treated as unsecured claims and may be affected by the restructuring plan.	Yes, but creditors of secured claims may not be treated worse than during an insolvency proceeding under the IO.

	Regular insolvency proceedings	Restructuring regime under European Restructuring Directive (ReO)
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	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: ■ Secured creditors, including: – Creditors with a right to segregation of assets from the estate – Creditors with a right to preferred satisfaction of claims ■ Unsecured creditors Claims of shareholder creditors (for example, creditors under shareholder loans) are classified as lower ranking than other creditors' claims.	Save for SMEs undergoing a Restructuring Procedure, and a debtor must categorize its creditors whose claims are to be reduced or deferred and must categorize them into the following creditor classes: ■ Secured creditors (only up to the amount that is covered by the collateral) ■ Unsecured creditors ■ Bond creditors ■ Creditors in need of protection (claims under EUR 10,000) ■ Subordinated creditors Creditors within the same creditor class have to be treated equally in relation to their claims. The restructuring plan has to be accepted within every creditor class (with the exception of a cramdown).
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	No, the commencement of insolvency proceedings does not require shareholder approval. However, a restructuring plan needs to be proposed by the debtor, which the shareholders control. If the debtor is a partnership, every partner's approval of the restructuring plan is required.	Generally, given that shareholders do not form a separate creditor class, there is no direct involvement of the shareholders in the process unless required by the constitutional documents of the debtor. However, if the restructuring plan does not affect shareholders, a consent requirement stipulated in the constitutional documents may be overruled by a decision of the restructuring court (Section 37 ReO).
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Minority creditors are bound by decisions taken by the relevant majority of creditors.	**Restructuring plan:** Yes, if the restructuring plan is court-approved. ■ 75% majority decisions within every class of creditors are possible. ■ Furthermore, there is a possibility of simple majority decisions between different creditor classes (so-called "cross-class cram down"), if – Rejected classes of creditors are treated the same as equal classes and better than subordinated classes. – No class of creditors receives more than the full amount of its claims. – A simple majority of the classes have approved the plan. However, a rejecting creditor who is in a less favorable position compared to an insolvency proceeding can still object to the plan. This is particularly relevant for secured creditors (Section 35 ReO). If the restructuring plan is not court-approved, it has a binding effect only on consenting creditors.

	Regular insolvency proceedings	Restructuring regime under European Restructuring Directive (ReO)
Commencing the process		
Who can commence?	The initiation of insolvency proceedings can be requested by: ■ The debtor (represented by its management) ■ 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.	Only the debtor.
Is shareholder's consent required to commence proceeding?	No	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 cooperate to a certain degree. Each administrator is required to act in the best interest of the creditors of their estate.	No, restructuring procedures for each legal entity are formally independent.
Is there any court involvement?	Yes, the court decides whether the debtor is insolvent and can open proceedings. 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.	Yes; however, the scope and intensity of court involvement depend on the restructuring measure chosen by the debtor. The court is involved in particular in the following cases: ■ In case the debtor applies for some or all of the optional instruments of the restructuring framework (i.e., restructuring plan approval procedure, a preliminary judicial examination of issues relevant to the confirmation of the restructuring plan (preliminary examination), plan confirmation) ■ In case the debtor applies for the appointment of an optional restructuring professional ■ In case the appointment of a restructuring professional is mandatory
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 a request is granted, which is often the case if there is a chance for the debtor to continue 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. The administrator may only take certain decisions. Such decisions include decisions on the avoidance of transactions and the review of creditors' claims.	Generally, management retains control of the debtor's assets (debtor in possession). However, in most cases of a mandatory appointment of a restructuring professional by the restructuring court (i.e., if a debtor in possession leads to disadvantages for the creditors or if it is foreseeable that the restructuring objective can only be achieved by way of a cross-class cramdown), the restructuring court may order restrictions.

	Regular insolvency proceedings	Restructuring regime under European Restructuring Directive (ReO)
What is level of disclosure of 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.	The restructuring plan addressed to all parties affected by the plan must particularly include the following: ■ The complete restructuring plan, together with annexes ■ The conditions of the plan The restructuring plan offered must indicate with which claims or rights the affected party is included in the restructuring plan, to which groups the plan is assigned, and which voting rights the claims and rights grant.
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, subject to the rules set out in the Act on Bank Recovery and Resolution (BaSAG) implementing the EU Bank Recovery and Resolution Directive (BRRD).	Natural persons who are not entrepreneurially active, as well as entities from the banking, financial and insurance sector, are excluded from the scope of the ReO.
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 offense and can lead to the managers being personally liable. Once 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.	N/A, due to lack of empirical value, the law just recently entered into force.
Effect of process		
Does debtor remain in possession with 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 remains in control. Among others, the following requirements need to be met: ■ A restructuring plan offering a quota exceeding 30% needs to be offered. ■ An exact list of assets needs to be provided. ■ A cash flow prognosis for the next 90 days needs to be provided. The debtor needs to lay out how it intends to fulfill the restructuring plan and what measures it intends to take.	Generally, management retains control of the debtor's assets (debtor in possession). However, in most cases of a mandatory appointment of a restructuring professional by the restructuring court (i.e., the court suspends foreclosure or if it is foreseeable that the restructuring objective can only be achieved by way of a cross-class cramdown), the restructuring court may order restrictions.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	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 enforcement would be detrimental to the estate's financial and economic situation.	Upon request of the debtor, the court can order a stay on the enforcement actions (Vollstreckungssperre). A filing for such a moratorium may be made at the same time as filing for the commencement of the Restructuring Procedure. Creditors may not terminate material contracts during the term of the moratorium. The moratorium, which can be extended to different creditor classes, generally may not exceed three months. However, upon request of the debtor, the moratorium may be extended to six months.

	Regular insolvency proceedings	Restructuring regime under European Restructuring Directive (ReO)
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	No	Yes, there is a provision in respect to financing granted to the debtor by existing or new creditors during the restructuring proceeding, which must be approved by the restructuring court (so-called bridge financing). Such financings can, in principle, not be challenged in case they have been laid down in the underlying restructuring plan.
Can procedure be used to implement debt-to-equity swap?	No, a debt-to-equity swap is generally not allowed under Austrian insolvency law.	No, a debt-to-equity swap is generally not allowed.
Are third-party releases available?	The release of third-party debtors (including guarantors) requires the express consent of the relevant creditor (Section 151 IO).	The release of third-party debtors (including guarantors) requires the express consent of the relevant creditor (Section 151 IO icw Section 39 para 4 ReO).
Are the proceedings recognized abroad?	EU Member States recognizes the proceedings 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 bilateral or multilateral agreements.	Yes, it is based on European Insolvency Regulation (if public process) and/or Brussels I Regulation (if non-public).
Has the UNCITRAL Model Law been adopted?	No	No
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.	Yes
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 the debtor's management's wrongful or insolvent trading activities. 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 offense 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 one year.	Same as in regular insolvency proceedings. However, certain modifications apply during restructuring proceedings (Section 24 ReO).

	Regular insolvency proceedings	Restructuring regime under European Restructuring Directive (ReO)
What is the order of priority of claims?	■ 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. ■ Right of separation (Absonderungsrechte): especially secured creditors ■ Claims against the estate (Masseforderungen): Certain claims listed in Section 46 IO have priority over other claims. Such claims include the following: – The costs of the insolvency proceedings (including compensation for the administrator and creditor organizations) – Costs and expenses (including taxes and employees' wages) arising from actions taken or periods after the opening of the insolvency proceedings – Costs arising from the termination of employment (under certain circumstances) – Claims arising from existing contracts that the administrator stepped into after the opening of the proceedings – All claims based on actions taken by the administrator – Claims based on unjustified enrichment of the estate	In practice, same as in insolvency proceedings, since the insolvency ranking needs to be reflected for the restructuring plan to pass the relevant comparison tests that apply if a creditor would challenge the restructuring plan (Kriterium des Gläubigerinteresses, Section 35 ReO).
Do pension liabilities have any priority over other unsecured claims?	Company pension schemes constitute a supplement to statutory pensions. A company grants them 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), the company can make no more pension payments. The pension will be partially covered by an entity established to ensure employee compensation in the event of insolvency. To the extent that the said entity does not cover pension claims, 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.	Same as in regular insolvency proceedings, noting that it is prohibited to reduce claims of current or former employees under the Restructuring Procedure.
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: ■ Intention to discriminate against other creditors ■ Preferential treatment of one or more creditors ■ Transactions with no consideration ■ A counterparty's knowledge of the debtor's illiquidity or over-indebtedness ■ 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.	Same as in regular insolvency proceedings. However, certain modifications apply for bridge financings approved by the restructuring court (Section 36a, Section 36b IO).

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Belgium

Remark: Belgium is a member of the European Union. Please refer to the European Union chapter to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. The EU Restructuring Directive of 20 June 2019 (EUR 2019/1023) is still to be implemented in Belgium. For more information, please see: The New European Restructuring Schemes - Update May 2022.

	Judicial reorganization through collective agreement	Bankruptcy
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	Security can generally be taken from overall assets, including accounts receivable. Security taken after the opening of a judicial reorganization procedure will have no effect during such a 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 a challenge. See below for more information on the pre-bankruptcy hardening period.
What is the nature of the insolvency 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 for a company to file a case in this jurisdiction?	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 center of main interests (COMI) for a company to file a case in this jurisdiction?	Yes	Yes
Is restructuring of both secured and unsecured claims possible?	Yes, but secured claims cannot be without the creditor's individual consent, save for a suspension of rights that cannot exceed a period of 24- to 36 months as from the date of ratification of the reorganization plan subject to payment of interest. However, the above protection is 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 procedure aims to liquidate the debtor's assets and distribute the proceeds to the creditors in accordance with their respective priority rights.

	Judicial reorganization through collective agreement	Bankruptcy
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	There are no separate classes for voting and treatment purposes. All creditors affected by the reorganization plan vote as one class.	N/A
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	Shareholder approval is not needed to commence a case. If a shareholder is also a creditor affected by the reorganization plan, they will be entitled to vote on a plan together with the other creditors.	Shareholder approval is not needed to commence a case. N/A
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes. The reorganization plan will be approved in the case of a 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 the case of territorial insolvency proceedings.
Is shareholder's consent required to commence proceeding?	No	No
Is there an ability to consolidate group estates?	No, but there is a possibility of appointing 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 level of disclosure of process to voting creditors?	Creditors will receive access to the draft reorganization plan and an invitation 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

	Judicial reorganization through collective agreement	Bankruptcy
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 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 took a few weeks to prepare these and other required documents. However, the Law of 21 March 2021 now permits the delivery of some of these documents to be postponed so that the judicial reorganization request can be filed on an expedited basis. 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.
Effect of process		
Does 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)? Is the stay or moratorium worldwide?	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. The moratorium would apply worldwide in respect of all the debtor's assets irrespective of where they are located; the subject, however, to the opening of a territorial insolvency proceeding where the debtor has an establishment and various other exceptions. Besides, a different question is whether a local non- EU court would accept and enforce such a moratorium.	N/A
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	Yes. New creditors are not subject to the moratorium. If there is a close connection between the termination of the judicial reorganization and subsequent bankruptcy, new creditors will enjoy a super-priority in the subsequent bankruptcy.	Yes

	Judicial reorganization through collective agreement	Bankruptcy
Can procedure be used to implement debt-to-equity swap?	Yes	N/A
Are third-party releases available?	In principle, third parties such as co-debtors, guarantors or security providers 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	No
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 in the way that 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 repayment of at least 20% of the principal amount of each claim. If the reorganization plan provides for 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 the case of bankruptcy is extremely complicated given the many different types of liens (e.g., vendor's lien, the 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.
Do pension liabilities have any priority over other unsecured claims?	Company pension schemes are supervised by the Financial Services and Market Authority (FSMA). As 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). As company pension schemes must be externalized to a pension provider (be it a group insurer or a pension fund), an employer's potential bankruptcy would not affect the pension provisions. If the pension provider is subject to bankruptcy proceedings, the employer will remain responsible for fulfilling the pension obligations toward its employees.

	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 the 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 judgement, 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 affected and legal acts entered into during the pre-bankruptcy hardening period may be subject to challenge. Payments affected 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.

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Brazil

	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
Initial considerations			
Can you take security over all types of assets, including accounts receivable?	Yes.	Yes, as long as this is set forth in the plan approved by the creditors' meeting.	No.
What is the nature of the insolvency 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 set forth in the law.
What is the solvency requirement for a company to file a case in this jurisdiction?	The debtor must be in financial distress, which means potential insolvency.	The debtor must be in financial distress, which means potential insolvency.	The debtor must currently or imminently be cash flow insolvent.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	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). Additionally, recent changes in the Brazilian Bankruptcy Law seem to allow the filing of judicial reorganization lawsuits by foreign companies in Brazil, as long as such companies have their center of main interests in Brazil. There are still no lawsuits filed in the Brazilian courts involving this situation.	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. Additionally, recent changes in the Brazilian Bankruptcy Law seem to allow the possibility of a foreign company being declared bankrupt in Brazil if the company has its center of main interests in Brazil. No lawsuits have been filed in Brazilian courts involving this situation.

	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
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.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	The Brazilian Bankruptcy Law does not provide for the classification of creditors in extrajudicial reorganization. Debtors 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. 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, the proceeds must be divided once the assets are sold. The Bankruptcy Law states the following payment order: (i) superpriority 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) unsecured creditors (which include contractual penalties and fines, including tax penalties); and (vi) subordinated credit (e.g., shareholders' credits).
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	Yes, shareholder approval is needed to commence the case, as set forth in the Brazilian Corporate Law. In this case, there is no voting process for creditors. Note, however, that shareholders' credit is not considered for the quorum (half 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, shareholder approval is needed to commence the case, as set forth in the Brazilian Corporate Law. However, the debtor's shareholders, as well as its affiliated or controlled companies, are not entitled to vote on the reorganization plan. If the debtor or its shareholders have higher than 10% equity participation in other companies, such companies are also not entitled to vote on the reorganization plan.	N/A
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	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 half of all claims of the same corresponding 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 creditors, (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 by the simple majority of all creditors present. Creditors belonging to the labor class shall approve the judicial reorganization plan by a simple majority of all creditors present, independently of their credits. If the creditors' meeting rejects the plan, the court shall declare the debtor bankrupt. 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 (cramdown 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. Broadly, the reorganization plan is filed by debtor. However, in some specific cases, creditors are entitled to replace the debtor and file an alternative reorganization plan.	N/A

	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 the responses in the Initial considerations section above).	Yes (please see the responses in the Initial considerations section above).	This depends on who filed for bankruptcy (please see the answer to "Who can commence?" above).
Is there an ability to consolidate group estates?	The law does not state such a possibility, but it is a common practice.	Debtors that are part of a group under common corporate control may file a single judicial reorganization lawsuit. As a general rule, debtors must file independent plans to present creditors with new terms and conditions to fulfill the obligations. Exceptionally, the judge may authorize the filing of a single plan, as long as at least two of the following requirements are met: (i) similarity of shareholders/managers among the debtors; (ii) existence of a control/dependence relation among the debtors; (iii) existence of cross-guarantees offered by the debtors; and (iv) joint action of the debtors in the business market.	No, except in the case of piercing of the corporate veil whereby a shareholder is included in the process (in this case, the shareholder will be liable for the debts of the bankrupt estate, but this shareholder will not be considered 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 comingling of assets of a company and its shareholders.
Is there any court involvement?	There could be if the debtor requests the ratification of the agreement to bind it to all the creditors in the same situation as those who signed it (i.e., in the same class).	Yes	Yes
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.

	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
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 legal 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 legal equivalents 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 legal equivalents 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).
Effect of process			
Does the debtor remain in possession with continuation of incumbent management control?	Yes	Yes. Debtor management retains its 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)? Is the stay or moratorium worldwide?	N/A	The stay period is 180 days, but the judge can extend this period once, for an equal period of time.	N/A
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	No	Yes, the Brazilian Bankruptcy Law was recently amended not only to authorize a debtor-in-possession transaction with the debtor to finance its activities and the expenses of restructuring or preserving business activity value but also to recognize its superpriority in case of bankruptcy. However, all the obligations incurred by the debtor after the filing of the judicial reorganization lawsuit have superpriority over the credits that are subject to the judicial reorganization proceeding in case the debtor is declared bankrupt.	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.

	Extrajudicial reorganization proceeding	Judicial reorganization proceeding	Bankruptcy
Are the proceedings recognized abroad?	Yes, Brazil recently changed its Bankruptcy Law to adopt the UNCITRAL Model Law on Transnational Insolvency, including recognizing foreign insolvency proceedings in Brazil and cooperating with foreign authorities.	Yes, Brazil recently changed its Bankruptcy Law to adopt the UNCITRAL Model Law on Transnational Insolvency, including recognizing foreign insolvency proceedings in Brazil and cooperating with foreign authorities.	Yes, Brazil recently changed its Bankruptcy Law to adopt the UNCITRAL Model Law on Transnational Insolvency, including recognizing foreign insolvency proceedings in Brazil and cooperating with foreign authorities.
Has the UNCITRAL Model Law been adopted?	Please see the above response to the question "Are the proceedings recognized abroad?"	Please see the above response to the question "Are the proceedings recognized abroad?".	Please see the above response to the question "Are the proceedings recognized abroad?".
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 required 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 required to pay indemnification to the bankruptcy estate.
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 (this period of time can be extended to two years if: (i) the labor creditors approve such provision in the reorganization plan; (ii) the debtor posts a bond; and (iii) the labor credits have to be paid without any discount).	The following order will apply: (i) superpriority creditors (for example, bankruptcy estate costs and loans granted during the judicial reorganization proceeding); (ii) labor credits (limited to 150 minimum wages for each employee) and occupational accident claims; (iii) secured credits; (iv) tax claims; (v) unsecured credits (which include contractual penalties and fines, including tax penalties); and (vi) 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).
Do pension liabilities have any priority over the unsecured claims?	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.	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

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**Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law*

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 accounts receivable?	Yes	Yes
What is the nature of the insolvency process?	The CCAA offers a court-driven process that is a flexible and powerful tool for restructuring or liquidating companies in financial difficulty. The purpose of the CCAA is to avoid bankruptcy by allowing the debtor to restructure its affairs under the supervision of the court. It is Canada's preferred process for large and complex restructuring and reorganizations. As a first step, the insolvent company will make an application to the court under the CCAA. Once the application is granted, the court will make an initial order granting the insolvent company a stay of proceedings. The CCAA grants broad discretion to the court to make orders necessary to facilitate the restructuring. Typically, the court will exercise its discretion to grant CCAA protection if a restructuring or orderly liquidation would benefit creditors. Once CCAA protection is granted, the insolvent company will 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. Conversion of debt to shares is also common. Once the company develops the plan, it will be put to the creditors for approval and 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. Alternatively, the CCAA proceeding may also be used as a mechanism to effect the sale of all or part of the debtor's assets or business either through a sales process or a pre-packaged sale transaction arranged prior to the CCAA filing but subject to court approval.	The BIA provides for both restructuring and bankruptcies of insolvent individuals and corporations. The BIA is more rule-based with a more detailed set of processes and procedures than the CCAA and it was designed to create orderly and predictable liquidations or restructurings. Restructuring under the BIA tends to be shorter in duration and less expensive. A debtor seeking to restructure under the BIA will file a proposal or a notice of intention (NOI) to file a proposal. The debtor making the proposal remains in control of its property, but a trustee will be appointed to oversee the process and assist the debtor with the restructuring. The goal of a BIA proposal is to facilitate a restructuring of a debtor's obligations with its creditors. The creditors and the court must approve the proposal. If the proposal is not approved, the debtor will automatically go into bankruptcy. Like with the CCAA, the proposal proceedings can be used to effect a sale of all or part of the debtor's business or assets. 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. In a 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.

	Plan of arrangement (Companies Creditors Arrangement Act "CCAA")	Restructuring or liquidation (Bankruptcy and Insolvency Act "BIA")
What is the solvency requirement for a company to file a case in Canada?	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: ■ for any reason is unable to meet its obligations as they generally become due ■ has ceased paying current obligations in the ordinary course of business as they generally become due ■ has the 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 center of main interests (COMI) for a company to file a case in Canada?	No. The CCAA applies to any legal entity or person 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 secured party's consent.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	The insolvent company typically forms classes of creditors 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 insolvent company unfairly attempts to use the classes to swamp a dissenting group with unique rights. The CCAA states that no plan that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid. Parties having equity claims are to be in the same class in relation to those claims and may not, as members of that class, vote on a plan unless the court orders otherwise.	In a BIA proposal proceeding, 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, but it is typical for unsecured creditors to form a single class. All creditors with equity claims must be in the same class and may not, as members of that class, vote on any proposal unless the court orders otherwise.
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	No	No
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	There are no provisions allowing an inter-class "cram-down". If the requisite majorities are not obtained for any class then the plan will not be binding on that class. 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) and the court. This means that a dissenting creditor can only be bound if: ■ it is placed in a class of creditors where it does not have a veto ■ that class approves the plan despite the creditor's negative vote ■ a majority of creditors in other classes approve the plan ■ the court subsequently sanctions the plan	Creditors and the court approve a BIA proposal in a manner similar to a CCAA plan. The court must be satisfied that the proposal is for the general benefit of the creditor and that the debtor's creditors are better off under the proposal than they would be if the company were liquidated through bankruptcy.

	Plan of arrangement (Companies Creditors Arrangement Act "CCAA")	Restructuring or liquidation (Bankruptcy and Insolvency Act "BIA")
Commencing the process		
Who can commence?	Either the debtor or a creditor can initiate CCAA proceedings by application to the court. However, it is unusual for a creditor to bring the application.	The debtor can commence restructuring by filing a proposal or an NOI to file a proposal by a trustee or receiver that has already been appointed over the debtor. Bankruptcy can be commenced either by the debtor filing 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. Protection under 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?	The court supervises a CCAA restructuring — often by a single judge — from beginning to end. The court will appoint an independent party that is a licensed insolvency trustee as the "monitor". The monitor's primary 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.	In a proceeding under the BIA, 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.
Who manages the debtor?	The debtor (through its management) remains in control of its assets and operations. The court-appointed monitor will scrutinize the debtor's actions and report to the court if any material adverse changes occur.	In a bankruptcy, the debtor's property is entrusted to the bankruptcy trustee, an officer of the court with power over the assets. The trustee is charged with collecting and liquidating the assets of the bankrupt and distributing the proceeds to creditors. In a BIA proposal, the debtor continues to manage the business. The proposal trustee's role is to monitor the debtor's actions, assist the debtor in developing the proposal, and advise the court if any material adverse changes occur.
What is level of disclosure of process to voting creditors?	Throughout the restructuring process, the monitor provides regular reports to the court and creditors on the insolvent company's business and status and the restructuring's progress. 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 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".

	Plan of arrangement (Companies Creditors Arrangement Act "CCAA")	Restructuring or liquidation (Bankruptcy and Insolvency Act "BIA")
Effect of process		
Does the debtor remain in possession with the continuation of incumbent management control?	The debtor normally continues operations while it attempts to restructure. While incumbent management may remain in control, 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 BIA proposal, the directors and management retain control of the debtor's business 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, which liquidates the assets and distributes the proceeds.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	If the court is satisfied that the insolvent debtor has a reasonable prospect of restructuring, it will make an initial order that grants the debtor up to 10 days of protection from its creditors. The initial order is limited to relief that is reasonably necessary for the continued operations of the debtor in the ordinary course of business for no longer than the initial 10-day stay period. Before the expiry of that period, the debtor must return to court to request an extension. 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 is lifted. Absent compelling reasons, courts are typically reluctant to lift the stay. As a federal statute, the CCAA has applications throughout Canada (and purports to have worldwide jurisdiction).	In a BIA proposal, 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 secured creditors if the secured creditor has given notice ten days before the BIA proposal is filed of the secured creditor's intention to enforce its security. The initial stay for restructuring is 30 days and may be extended up to an additional five months by the court. In a bankruptcy, the automatic stay of proceedings applies only to unsecured creditors. The bankruptcy trustee may seek a limited stay against secured creditors 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 or rescuer financing or superpriority or priming financing?	Yes. The CCAA grants the court overseeing the proceeding to make orders granting super-priority charges that will rank ahead of secured creditors to the extent such creditors have received notice of the proposed changes.	Yes. The BIA also grants the court authority to grant super-priority charges.
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.

	Plan of arrangement (Companies Creditors Arrangement Act "CCAA")	Restructuring or liquidation (Bankruptcy and Insolvency Act "BIA")
Are third-party releases available?	Yes. The broad discretion under the CCAA permits granting third-party releases. Subject to court approval, a debtor may enter into third-party releases as part of its plan of arrangement or compromise in a CCAA proceeding where the third-party releases are reasonably connected to the restructuring. Factors that the court will consider include whether: ■ the parties to be released are necessary and essential to the restructuring ■ the claims to be released are rationally connected to the purpose of the plan ■ the plan can succeed without the releases ■ the parties being released were contributing to the plan ■ the releases benefit the debtors as well as the creditors generally ■ the creditors voting on the plan have knowledge of the nature and the effect of the releases ■ if the releases are fair, reasonable and not overly-broad	Yes. A BIA 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.
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.
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	Yes. It is common for the debtor company to continue operations during a proposal proceeding. 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.

	Plan of arrangement (Companies Creditors Arrangement Act "CCAA")	Restructuring or liquidation (Bankruptcy and Insolvency Act "BIA")
Other factors		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Canadian law does not prohibit companies from carrying on business while insolvent, and directors have no express obligation to initiate bankruptcy or restructuring proceedings. However, directors 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. Directors can also face claims that the debtor conducted its affairs in a manner oppressive to stakeholders. Accordingly, prudence may dictate that directors consider insolvency proceedings to avoid these personal claims. The CCAA authorizes the court to indemnify directors and officers against post-filing liabilities to encourage them to remain in office throughout the restructuring.	The same consideration applies as under a CCAA proceeding.
What is the order of priority of claims?	Generally speaking, creditor claims rank as follows in an insolvency proceeding in Canada: ■ Super-priority claims including valid trust claims, real estate taxes, certain specified statutory claims, certain unpaid supplier claims and court-ordered charges ■ Secured claims ■ Preferred claims include certain limited landlord claims and other limited claims that are given priority under the statute ■ Unsecured claims	
Do pension liabilities have any priority over other unsecured claims?	Yes. Under the CCAA, the court cannot approve a plan of arrangement, 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 statutorily required payments 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.	Yes. The three main types of prior transactions that may be challenged in BIA proceedings are: ■ transactions at an undervalue (i.e., where the debtor received less than the fair market value of the asset in consideration) ■ transactions that have the effect of preferring one creditor or party to others (as under the CCAA) ■ dividends paid out during the time that a corporate debtor is insolvent

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Chile

	Liquidation proceeding	Reorganization proceeding
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	Generally, under Chilean law, creditors can take a security interest over all assets of the debtor. 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, under Chilean law, creditors can take a security interest over all assets of the debtor. 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 insolvency 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 company to file a case in this jurisdiction?	For a creditor to start liquidation proceedings, its claim must be grounded on any of the following circumstances: ■ 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). ■ 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). ■ 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. There are no strict legal grounds to request the reorganization procedure.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	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 restructuring secured and unsecured claims.	Yes. Reorganization proceedings are flexible, allowing the restructuring of both secured and unsecured claims.

	Liquidation proceeding	Reorganization proceeding
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	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 unsecured, without preference to collect their debts.	Yes. There are creditors with voting rights and creditors without voting rights; secured 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 shareholder approval needed to commence a case?Are shareholders entitled to vote on a plan?	No shareholder vote is required to start the process. This matter is governed by general rules and the regulation of the corporate bylaws. Likewise, shareholders — is related to the debtor — have no right to vote in creditors' meetings.	No shareholder vote is required to start the process. This matter is governed by general rules and the regulation of the corporate bylaws. Likewise, shareholders — is related to the debtor — have no right to vote in creditors' meetings.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes. Dissenting creditors are bound if the required creditor approvals are obtained (50+1, 4/7 or 2/3 depending on the case).	Yes. Dissenting creditors are bound if the required creditor approvals are obtained (50+1, 4/7 or 2/3 depending on the case).
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: ■ 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). ■ The debtor has defaulted two or more payment obligations in executive documents; 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. ■ 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 the reorganization of the debtor company to the competent court based on its financial distress.
Is shareholder's consent required to commence proceeding?	No.	No.
Is there an ability to consolidate group estates?	No.	No.

	Liquidation proceeding	Reorganization proceeding
Is there any court involvement?	Yes. The competent court, which 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 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. The court's main involvement is related to the determination of credits in case of challenges from the debtor, the overseer, or any other creditor.
Who manages the debtor?	The settlement administrator (liquidator). They represent the debtor and are in charge of administering and liquidating their assets to make payments to creditors in the established order.	The overseer (intervenor) shall monitor the process and the state of the debtor's business and promote settlements between the debtor and its creditors.
What is level of disclosure of process to voting creditors?	The liquidation proceeding is 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.	The reorganization proceeding is 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, certain types of debtors, such as financial entities, insurance companies or investment services companies, 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 a liquidation proceeding. The insolvency court has to hear the debtor first before initiating the liquidation proceeding. 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 debtor remain in possession with continuation of incumbent management control?	No. The debtor is prevented from managing his 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 a continuation of incumbent management unless agreed otherwise in the Reorganization Agreement.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	After the commencement of insolvency proceedings, no enforcement proceedings can be started against the debtor and those previously started shall be stayed. But 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 to foreclose actions independent from the liquidation proceeding. The moratorium regime is effective only within Chilean territory; to make it effective in other jurisdictions, the Chilean insolvency process should be recognized abroad.	There is a "financial protection period" that lasts 30 days from 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. If the creditors meeting so agrees, this period can be extended to 60 and 90 days. This relief is effective only within Chilean territory; to make it effective in other jurisdictions, the Chilean insolvency process should be recognized abroad.

	Liquidation proceeding	Reorganization proceeding
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	No.	Yes, in accordance with the terms and conditions of an approved reorganization plan. Also, creditors that provide financing to debtors during the reorganization proceeding may be entitled to a superpriority.
Can procedure be used to implement 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.
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 all together 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.
Other factors		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	There is no obligation binding on the debtor, its partners, directors or representatives to file for insolvency. Nevertheless, Chilean insolvency law affords creditors certain civil and criminal actions in case of: (i) inducement or aggravation of insolvency; (ii) hiding of assets; or (iii) misleading accounting information. As a general rule, 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 offenses referred to above, the representative would be personally liable for such criminal offenses. 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 his/her negligence or fraud caused the mismanaged business situation.	N/A
What is the order of priority of claims?	■ 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) ■ Unsecured creditors	■ 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) ■ (ii) Unsecured creditors

	Liquidation proceeding	Reorganization proceeding
Do pension liabilities have any priority over other unsecured claims?	Yes. Pension claims are "preferred credits" and rank ahead of unsecured claims in any distribution.	N/A. Pension liabilities are not subject to reorganization proceedings.
Is it possible to challenge prior transactions?	Yes. ■ 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 ■ 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 caused a detriment to other creditors, made within two years from the commencement of the insolvency procedure	Yes. ■ 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 ■ 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 caused a detriment to other creditors, made within two years from the commencement of the insolvency procedure

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China

	Dissolution proceedings	Bankruptcy proceedings
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	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 insolvency process?	It is a company law process. Dissolution proceedings can be initiated either voluntarily or ordered by the court at the application of qualified shareholders, creditors, directors and other stakeholders. Under People's Republic of China (PRC) law, the following reasons could result in the dissolution of a company: ■ The term of business operation prescribed by the articles of association (AOA) expires, or any situations for dissolution prescribed in the AOA apply. ■ The shareholders' general meeting resolves to dissolve the company. ■ It is necessary to dissolve the company due to a merger or demerger. ■ According to law, the business license is canceled, or the company is ordered to close down. ■ Where a company meets severe 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 otherwise be solved, the shareholders who hold 10% or more of the voting rights of the company may lead to the court to dissolve the company. 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.	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 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.

	Dissolution proceedings	Bankruptcy proceedings
		Revival: Either the creditor or the debtor can apply to the court to initiate the revival proceedings. The debts will be put under a moratorium to revive 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 for a company to file a case in this jurisdiction?	If the dissolution proceedings are triggered due to the above-mentioned events (1), (2), (4) and (5), a liquidation group will be formed to conduct liquidation proceedings. 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 is obviously incapable of paying off its debts. When the above-mentioned requirement is satisfied, the court can initiate revival or bankruptcy liquidation proceedings upon application from either the debtor or creditor. However, the settlement proceedings can only be initiated by the court upon application from the debtor.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	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 where the principal office of a company is located. Where the principal office location 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 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.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	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: ■ Employee claims ■ Social security claims and tax claims ■ 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.

	Dissolution proceedings	Bankruptcy proceedings
		In addition, bankruptcy expenses, as well as the following community debts, will be paid at any time during the bankruptcy proceedings: ■ Debts generated when the debtor or administrator requests that the counterparty perform a contract that is not fulfilled completely by both parties ■ Debts generated from management of the debtor's assets without authority (negotiorum gestio) ■ Debts generated as a result of unjustified enrichment ■ Expenses incurred for the continuance of business operations, social insurance premiums, etc. ■ Debts generated from damages that occurred during the performance of an administrator's duty ■ 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 shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	Shareholder approval is not required to commence the case. Neither does PRC company law prescribe the shareholders' entitlement to vote on a plan. That said, after the company's liquidation 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 for deregistration. The liquidation group will also make a public announcement regarding the company's closure.	Shareholders' voting approvals are not required to commence the case. 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.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	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 supermajority (over two-thirds) of creditors or are subject to a court order. The decisions made through a creditors' vote or 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, creditors, directors and other stakeholders.	Bankruptcy liquidation proceedings or revival proceedings can be initiated by the court upon the application of any of the following: 1. A debtor or creditor 2. A liquidation group involuntary liquidation proceedings 3. A creditor in a bankruptcy settlement where the company fails to duly perform the settlement agreement 4. An administrator/person of interest where the company fails to duly implement the revival plan Settlement proceedings can be initiated and hosted by the court upon a debtor's application. The court can initiate revival proceedings upon the application of debtors and creditors.

	Dissolution proceedings	Bankruptcy proceedings
Is shareholder's consent required to commence proceeding?	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. For companies limited by shares, the decision to dissolve a company requires approval from shareholders who hold two-thirds or more of the shareholders' voting rights present in the shareholders' meeting. In addition, if the company suffers substantial difficulties in its operations or management, and (i) the shareholders' interests face heavy losses if the company continues to exist. and (ii) 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 at a meeting. However, there is no mandatory threshold o for shareholders' voting for approval. 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, which 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	Yes. When the legal personalities of affiliated companies are highly confused, and distinguishing their property would incur significant costs and severely jeopardize the fair repayment interests of creditors, the court may decide to consolidate the bankruptcy of the affiliated companies.
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 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, 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. The court supervises each stage of the bankruptcy proceedings.
Who manages the debtor?	The liquidation group formed by the company itself or designated by the court.	The court designates the administrator. That said, in revival proceedings, the company can manage its assets and business operations on its own under the administrator's supervision and can work out a revival plan itself.
What is level of disclosure of 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 agreements and distribution arrangements require significant disclosures to creditors for voting at the creditors' meeting.
What entities are excluded from customary insolvency or reorganization proceedings, and what legislation applies to them?	According to PRC law, dissolution proceedings under PRC company law apply to limited liability companies and companies limited by shares (including listed companies) established within China. 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.

	Dissolution proceedings	Bankruptcy proceedings
How long does it generally take for a creditor to commence the procedure?	N/A.	When a creditor makes an application for bankruptcy, the court will notify the debtor concerned within five days from the date it receives the application. 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 after the period for raising objections expires. 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. However, in practice, PRC courts usually take a long time (months or years) to take bankruptcy applications.
Effect of process		
Does 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 administrator's supervision.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	During the declaration period, when the creditors declare their rights to the liquidation group, the liquidation group will not settle any creditor rights. Yes, the stay/moratorium is worldwide.	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. Yes, the stay/moratorium is worldwide.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	No.	No.
Can procedure be used to implement debt-to-equity swap?	No.	Yes. Creditor rights can be converted into equity during the revival or settlement proceedings.
Are third party releases available?	No.	This is not applicable under bankruptcy liquidation proceedings. In bankruptcy settlement and revival processes, however, third-party releases may be available upon the consent of creditors.

	Dissolution proceedings	Bankruptcy proceedings
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.
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.
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 clarifies that any member of a liquidation group who causes loss to the company or any of its creditors, either intentionally or due to gross negligence, is liable to compensate the affected party.	N/A That said, where the debtor trades at zero price or an 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: ■ Liquidation expenses ■ Wages of employees ■ Social insurance premiums and legal indemnities ■ Outstanding taxes ■ 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.	After having discharged all the security interests created over its assets, the insolvent company's assets will be applied to settle the claims in the following sequence: 1. Bankruptcy expenses and collective debts using the company's assets 2. 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 3. 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 4. Normal unsecured creditor claims
Do pension liabilities have any priority over other unsecured claims?	Yes. See the order of priority of claims above.	Yes. See the order of priority of claims above.

	Dissolution proceedings	Bankruptcy proceedings
Is it possible to challenge prior transactions?	Yes, contract law rules and principles apply. For example, under the PRC Civil Code, a contract will be null and void under any of the following circumstances: **1.** The contract violates the compulsory provisions of laws and administrative regulations. **2.** The contract goes against public order and good morals. **3.** The contract is executed based on malicious collusion to damage the legitimate interests of a third party. **4.** The contract is executed based on the false expression of intent.	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: **1.** Uncompensated transfers of assets **2.** Transactions executed at clearly unreasonable prices **3.** Charge of assets as collateral for nonsecured debts **4.** Prepayment of debts that are not due **5.** Any waiver of creditor rights 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.

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	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 accounts receivable?	In general, yes, non-bankruptcy law regulates the creation of securities. In the context of the reorganization process, you can neither 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 the liquidation process, it is generally difficult for the debtor to constitute securities because the sole purpose of a liquidation impedes the company's 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 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 insolvency process?	A court process leading to the reorganization of the debtor's assets and liabilities in order to avoid its liquidation	A court process is 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
What is the solvency requirement for a company to file a case in this jurisdiction?	The debtor must either be in default of two or more obligations with two or more creditors for more than 90 days or be sued as a 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 the company's normal functioning, it can file for reorganization (art. 9, L. 1116/06).	There is no solvency requirement.	The same requirements as for the reorganization process apply.

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	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.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	Yes. The claims of creditors and shareholders are put into separate classes for purposes of voting and treatment under the plan. Categories of creditors to obtain majorities: Insolvency law provides five categories of creditors: (1) labor creditors; (2) public and social security institutions; (3) financial institutions; (4) internal creditors (shareholders); and (5) all the other external creditors. As a general rule, to obtain approval for 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 claims of creditors and shareholders are put into separate classes for purposes of voting and treatment under the plan. Categories of creditors to obtain majorities: Insolvency law provides five categories of creditors: (1) labor creditors; (2) public and social security institutions; (3) financial institutions; (4) internal creditors (shareholders); and (5) all the other external creditors. As a general rule, to obtain approval for 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 as apply for a reorganization also apply under this emergency regime. 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 shareholder approval needed to commence a case?Are shareholders entitled to vote on a plan?	No. Approval of a reorganization agreement requires an absolute majority of admitted votes coming from at least three different categories of creditors established in article 31 of Law 1116. Shareholders are entitled to vote on a plan. Voting rights of shareholders are computed as follows: (1) the result of subtracting in-kind earnings and net worth appreciation from the total net worth (2) is multiplied by the shareholding interest. If net worth is negative, each shareholder shall be assigned one vote.	No. Majority rules applicable to the approval of a reorganization agreement apply to an adjudication/assignment agreement. Shareholders are entitled to vote on a plan. Voting rights of shareholders are computed as follows: (1) the result of subtracting in-kind earnings and net worth appreciation from the total net worth (2) is multiplied by the shareholding interest. If net worth is negative, each shareholder shall be assigned one vote.	No, unless there is a debt-to-equity swap.

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes. A reorganization agreement approved by an absolute majority of voting rights is also binding for minority dissenting creditors.	Yes. An adjudication/assignment agreement approved by an absolute majority of voting rights is also binding for minority dissenting creditors.	In an emergency negotiation of debts, the reorganization plan shall be exclusively binding on those creditors pertaining to the categories of creditors subject to negotiation. In expedited recovery proceedings, the debtor may submit the reorganization plan for approval by the Bankruptcy Court, which if approved would be binding to minority dissenting creditors.
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 a 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 the 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 shareholder's consent required to commence proceeding?	No. However, the debtor's direct filing may be subject to standard bylaws' requirements on board or shareholder majority.	No.	No. However, the debtor's direct filing may be subject to standard bylaws' requirements on board or shareholder majority.
Is there an ability to consolidate group estates?	No. Special rules apply to the reorganization of business groups to ensure coordination between the proceedings commenced against each group member.	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.
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.

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
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. In the emergency negotiation, general insolvency restrictions on operations apply (art. 17 of Law 1116 and article 8 of Decree 560)
What is level of disclosure of process to voting creditors?	High. Once the debtor is admitted to reorganization, the Superintendence of Companies publishes on its webpage 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 via the webpage 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. Once the company is admitted to liquidation, the Superintendence of Companies publishes on its webpage and on the webpage of the debtor a notice of the commencement of the process for ten days. All the creditors have 20 days to submit their credit to the insolvency liquidator following those ten days. 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. 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 as follows: ■ Specific health institutions ■ Financial institutions ■ Stock market entities ■ Utilities ■ Territorial entities and decentralized entities	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 as follows: ■ Specific health institutions ■ Financial institutions ■ Stock market entities ■ Utilities ■ Territorial entities and decentralized entities	Institutions covered by article 3 of Law 1116 may apply for expedited recovery proceedings.
How long does it generally take for a creditor to commence the procedure?	This would depend on various factors, such as the amount of the debt, previous negotiations conducted with the debtor, and the nature of the relationship with the debtor.	N/A	N/A

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
Effect of process			
Does debtor remain in possession with continuation of incumbent management control?	Commonly, the debtor remains in possession with a continuation of incumbent management unless agreed otherwise in the reorganization agreement. The law imposes certain limitations on the management of the debtor regarding certain operations (such as granting of new securities) as of the date of the request for admission.	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 to 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)? Is the stay or moratorium worldwide?	Creditors will not be entitled to carry out collection proceedings against the debtor to collect the debts incurred prior to the debtor's admission 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; granting or enforcing any collateral over its own assets, including trusts; making offsets, payments, waivers or settlements of its debts; and any act of disposal of title over assets of its estate other than acts in the ordinary course of business of the company. It is forbidden for creditors to declare the unilateral termination of contracts due to the debtor's filing for or admission to a reorganization. A moratorium usually has territorial effects. In some cases, the debtor may apply for recognition of the local proceeding in foreign courts, subject to each foreign law.	All the collection proceedings commenced against the debtor shall be referred to the bankruptcy court for their inclusion as credits in the process 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 power to lift precautionary measures enforced against the debtor under existing individual collection proceedings filed by creditors. 2. The bankruptcy court has no power to issue any type of instruction regarding any trust constituted by the debtor as security. 3. The bankruptcy court has no power to prevent creditors' unilateral termination of contracts. 4. At its sole discretion, the debtor 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.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	Yes. There are mechanisms to have superpriority when financing a debtor in reorganization. The best way to achieve such superpriority would be by court approval or as part of the reorganization plan. Superpriority is unlikely to trump labor and tax claims.	No.	New mechanisms for financing with superpriority are included, even over fiscal credits. Some of them include secured or unsecured refinancing of a debtor under a reorganization proceeding (art. 5 of D. 560), debt-to-equity swaps (art. 4 of D. 560), and issuance of risk bonds (art. 4 of D.560).
Can procedure be used to implement 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.

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
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 that have adopted the UNCITRAL Model Law on Insolvency are more likely to recognize Colombian insolvency proceedings.	It depends on the specific rules of each jurisdiction where the Colombian proceedings are seeking to be recognized. Countries that 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
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.	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.

	Reorganization process	Liquidation process	COVID-19 emergency negotiation of debts or expedited recovery proceedings
	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 to shareholders or third parties (e.g., creditors) for operations concluded after the date of such dissolution grounds.		
What is the order of priority of claims?	The statutory payment order is as follows: (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.	Same as in reorganization.	General statutory payment order of Law 1116 applies.
Do pension liabilities have any priority over other unsecured claims?	Yes. Pension liabilities have first priority over all other kinds of creditors. 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?	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 an amendment to the debtor's bylaws 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.

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Czech Republic

Remark: The Czech Republic is a member of the European Union. Please refer to the European Union chapter to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. The EU Restructuring Directive is still to be implemented in Czech Republic.

	Insolvency proceedings
Initial considerations	
Can you take security over all types of assets, including accounts receivable?	Czech law allows security to be taken over any property that can be traded. 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, and the requirements may vary depending on the kind of property. As a general requirement, the assets to be taken as security need to be specified in order to be identifiable. Accounts receivables can form security as long as these can be sufficiently specified and as long as they are assignable.
What is the nature of the insolvency process?	Insolvency proceedings aim to limit losses that may be suffered by creditors in the event of 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 filing an insolvency petition by a legitimate person. Afterward, 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. An insolvency administrator is a person possessing 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 prescribed otherwise in the Insolvency Act. 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 creditors' supervision. The creditors' receivables are paid off gradually. Reorganization is available only 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 available only 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 provided below focuses on entrepreneurs.

Insolvency proceedings

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

A company as a debtor is insolvent and is obligated to file for insolvency 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, 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").

The Czech law further defines 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. If the company is in the state of impending insolvency, it may also file for insolvency, but it is not obligated to do so.

Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?

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, capitalized by debt-to-equity swap or otherwise restructured). Generally, the reorganization plan has to be approved by the creditors. For this purpose, the creditors are divided into groups and, as a general rule, each secured creditor forms a separate group. However, under certain conditions, the Insolvency Court may approve the reorganization plan even if it was not approved by each group of creditors.

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

Yes. First, there is a differentiation between secured and unsecured creditors of the debtor. Second, the law gives priority to some types of claims (please see below in the section "What is the order of priority of claims?").

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.

With some exceptions, registered creditors may vote at the creditors' meeting in relation to voting. The exceptions from voting usually encompass creditors with claims against the estate and equivalent claims, creditors with subordinate claims, creditors with rejected claims and creditors with conflict of interest. On some issues, such as the removal of the insolvency trustee, all creditors vote in one class. However, for voting on other issues such as the election of the creditors' committee or reorganization plan, the voting takes place separately in classes (classes of secured and unsecured creditors, or classes according to the priority of the claim). Shareholders are in the position of creditors only if they have a receivable from the debtor. In certain cases, they are prevented from being members of the creditors bodies and cannot exercise voting rights at the meetings of such bodies unless the Insolvency Court decides otherwise.

	Insolvency proceedings
Is shareholder approval needed to commence a case?Are shareholders entitled to vote on a plan?	No, the commencement of insolvency proceedings does not require shareholders' approval if filing an insolvency petition is mandatory. Under the Business Corporations Act, in case of impending 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 shareholder's surcharge outside the registered capital, dissolving the company). Therefore, if filing is voluntary (i.e., in case of impending insolvency), shareholders' consent may be required. 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. However, in certain situations, some limitations may apply. For example, the shareholders' creditors in the same group as the debtor cannot vote or their voting rights may be restricted. Some limitations may also apply if the debtor-company is a so-called close person to the shareholder.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	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 (like, for instance, in reorganizations) and the calculation of a 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 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 debtor representatives.
Is shareholder's consent required to commence proceeding?	No, the commencement of insolvency proceedings does not require shareholders' approval if filling an insolvency petition is mandatory. Under the Business Corporations Act, in case of impending insolvency, the board (executives) has an obligation to convene the general (shareholders') meeting without undue delay and shall propose that appropriate actions take place at the general meeting (e.g., restructuring, dismissing employees, selling a plant, receiving shareholder's surcharge outside the registered capital, dissolving the company). As a result, if filing 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 must act in the best interest of the creditors of his or her estate. Further, it is possible to consolidate 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 on how to resolve the insolvency, appoints the insolvency administrator and approves certain other actions.

	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 has the management right thereafter until the decision on how to resolve the insolvency is made. Depending on the procedure, both decisions may be issued at once (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 the insolvency decision. In bankruptcy proceedings, the court-appointed insolvency administrator manages estate assets and has the authority 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, makes decisions on trade secrets and other areas of confidentiality, acts in the capacity of an 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, which 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 such instructions are consistent with good governance. Upon the Insolvency Court's decision to authorize the reorganization, the powers of a debtor's general meeting are suspended and the insolvency administrator makes decisions without a general meeting unless otherwise provided by the Insolvency Act. Once the reorganization plan is adopted and approved, all actions must be in compliance with it.
What is the level of disclosure of 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, filings filled with the Insolvency Court that are kept in the debtor's file and other information unless otherwise provided by the Insolvency Act. The creditors' committee/meeting may supervise the administrator's or the debtor's activities and has a high level of access to additional information. In a 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, reports on the reorganization plan and other material 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) a self-governing territorial unit; (iii) the Czech National Bank; (iv) the General Health Insurance Company of the Czech Republic; (v) financial market guarantee system and funds managed by it; (vi) Securities Traders Guarantee Fund; (vii) a public higher education institution and (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.
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. In case 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 insolvency is reported to the competent Insolvency Court, the court is usually quick to issue its decision and open the proceedings.

	Insolvency proceedings
Effect of process	
Does debtor remain in possession with continuation of incumbent management control?	Subject to significant restrictions, the debtor continues to hold the management control until the decision on insolvency, and thereafter 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 the authority 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, makes decisions on trade secrets and other areas of confidentiality, acts in the capacity of the 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 same rights, which are, however, subject to significant restrictions. Such restrictions include a right of secured creditors to instruct the debtor on how to manage the security, provided that such instructions are geared toward good governance. Upon the Insolvency Court's decision to authorize the reorganization, the powers of a debtor's general meeting are suspended and the insolvency administrator makes decisions without a general meeting unless otherwise provided by the Insolvency Act. Once the reorganization plan is adopted and approved, all actions must be in compliance with it.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	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, filed 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 be granted only if the majority of creditors (calculated according to the amounts of their claims) consent in writing to granting 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 the creditors consent in writing. Note that a debtor in liquidation cannot benefit from the moratorium regime. The moratorium granted by the Insolvency Court has 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 moratorium period because of a payment default by the debtor that occurred before the granting of the moratorium period, or because of any decrease in the total assets of the debtor. This restriction applies only if the debtor pays amounts that became due during the moratorium period or within 30 days before the granting of the moratorium period. It is also possible to file for a moratorium prior to the commencement of the insolvency proceedings (e.g., when the insolvency is impending). In such a case, the information regarding the proceeding will not be publicly available. The moratorium applies to all creditors (including foreign creditors) and other persons. A moratorium is part of insolvency proceedings conducted in the Czech Republic, during which all claims are to be asserted via registration in the insolvency proceedings. However, even during the moratorium, it is generally possible to recognize insolvency decisions from other countries if the conditions for their recognition are fulfilled. Nevertheless, insolvency decisions from other countries may not be recognized if they concern assets that are subject to the insolvency proceeding in the Czech Republic.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	Yes, under certain circumstances and subject to approval by the creditors' committee/meeting (Insolvency Court's approval is not necessary), new financing might be obtained (so-called "credit financing"). Creditors' claims on credit financing are preferential claims against the estate and are satisfied preferentially. The secured creditors have a priority right to provide them 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.

	Insolvency proceedings
Are third-party releases available?	In general, 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 also remain unaffected by the reorganization plan. Therefore, it is the responsibility of such third parties to reach an agreement with relevant creditors if the reorganization plan is of direct concern to them. Therefore, the release of third-party debtors (including guarantors) requires an express agreement with the relevant creditor.
Are the proceedings recognized abroad?	EU member states recognize the proceedings 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 multilateral agreements.
Has the UNCITRAL Model Law been adopted?	No.
Can a debtor continue to carry on business during insolvency proceedings?	Yes. Generally, the operation of the debtor's business does not cease unless otherwise provided by the Insolvency Act or by another act or by the Insolvency Court's rulings. 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 the statutory body) and de facto directors, and, in exceptional cases, shareholders or supervisory board members, may be liable. Civil liability: Damages may be available 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 as a result cause insolvency). 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. The amount of damages is calculated to be the difference between the amount of the claim filed by the creditor and the amount received by the creditor in insolvency proceedings to satisfy this claim. However, damages may not be available if it can be proven that the breach of the obligation to file an insolvency petition did not affect the amount that is owed to the creditor or that the breach was caused by facts that are beyond the control of the person which the person could not avoid. Further, potential civil liability (especially for members of the statutory body) may occur as a result of the breach of the obligation to return consideration received from the company during the previous two years and for the payment of personal funds for the fulfillment of the company's obligations. Criminal liability: Depending on the specific circumstances of each case, the above persons may be criminally liable. These specific circumstances include, for instance, preferential treatment of a creditor, causing insolvency, causing damage to creditors, breach of obligations pertaining to the administration of property owned by others, fraud, setting aside or hiding assets, or for violation of bookkeeping duties.

Insolvency proceedings

What is the order of priority of claims?

A distinction is made between the following types of claims:

- Claims against the estate – cash expenses and fees of the insolvency administrator, creditor committee's remuneration and expenses, costs associated with the maintenance and administration of the debtor's estate, taxes, charges, duty, social security contributions, state employment policy contribution, public health insurance contributions, creditors' claims on credit financing, etc.
- Equivalent claims – 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 made.

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, labor-law claims of the debtor's employees, and creditors' claims to maintenance and to compensation for damage to health. The remaining 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, which sets out 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, which includes 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, unpaid claims against the estate, equivalent claims and secured claims, which may be satisfied at any time during the bankruptcy proceedings, are to be satisfied.

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) are satisfied, except for excluded claims.

Do pension liabilities have any priority over other unsecured claims?

To the extent that the employer does not pay pension contributions (statutory and voluntary), 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.

Statutory pension contributions will have priority as to claims against the estate (please see above in the section "What is the order of priority of claims?"). On the other hand, voluntary pension contributions are treated as other regular claims and have the same priority as other unsecured claims.

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 deemed 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 – acts resulting in one creditor, to the detriment of other creditors, receiving greater satisfaction of their receivable than they would otherwise have received 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)
- Legal acts where the debtor intentionally worsens the satisfaction of its creditor, if the counterparty acting with the debtor knew of this intention or, in view of all of the circumstances, must have known of this intention. Such legal acts 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 to set aside a transaction brought by the insolvency administrator protesting the debtor's legal acts and omissions (which may be brought within one year from the date on which the decision on insolvency becomes effective). The debtor's consideration paid (or equivalent compensation) for 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.

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England & Wales

	Company voluntary arrangement (CVA)	Scheme of arrangement (SoA)	Restructuring plan (RP)	Administration
Initial considerations				
Can you take security over all types of assets, including accounts receivable?	Yes. Prior to the commencement of the procedure, security can be taken over all types of assets, including book debts via a floating charge and/or fixed charge.	Yes. As per CVA.	Yes. As per CVA.	Yes. As per CVA.
What is the nature of the insolvency 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 Part 26 Companies Act 2006 process can be used for solvent or insolvent debt restructurings, which is done by way of a "creditor scheme" (i.e., requires creditor approval). A SoA can also be used to implement takeovers, which is done by way of a "member scheme" (i.e., requires shareholder approval).	The Part 26A Companies Act 2006 process, introduced by the Corporate Insolvency and Governance Act 2020, is used for insolvent debt restructurings only. The RP can only be used by a debtor that has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.	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 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.
What is the solvency requirement for a company to file a case in this country?	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).	The RP can only be used by a debtor that has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.	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.'

	Company voluntary arrangement (CVA)	Scheme of arrangement (SoA)	Restructuring plan (RP)	Administration
				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 center of main interests (COMI) for a company to file a case in this country?	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).	No. As per SoA.	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 consent.	Yes.	Yes.	Yes, if combined with a SoA or RP.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	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.	Yes. As per SoA.	Usually a restructuring within or as part of an administration takes the form of a SoA, RP or CVA. In a SoA, or RP the requirement to put creditor claims into relevant classes will apply.
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	Yes. Approval requires 50% or more in value of members/shareholders.	No shareholder approval is not required in a creditor scheme, which is the type of scheme used to effect a debt restructuring.	No. Shareholder approval is not required unless the members rights are being affected in which case they will placed in a voting class.	Usually a restructuring within or as part of an administration takes the form of a SoA, RP or CVA, which do not require shareholder approval.

	Company voluntary arrangement (CVA)	Scheme of arrangement (SoA)	Restructuring plan (RP)	Administration
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	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 debtor vote against the CVA proposal ("**CVA Creditor Approvals**"). Provided CVA Creditor Approvals have been obtained, the dissenting creditors will be bound (as well as creditors who didn't vote at all).	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."	Yes. Dissenting creditors in a particular class may be bound, subject to obtaining required approvals and a class of creditor who has not approved the RP can be crammed down if: ■ the court is satisfied that if the RP were sanctioned, none of the members of the dissenting class would be any worse off than they would be in the "relevant alternative". The "relevant alternative" is whatever the court considers to be most likely to occur in relation to the company if the RP were not sanctioned; and ■ the RP has been approved by at least one class of creditors or members who would receive payment or have a genuine economic interest in the company in the event of the "relevant alternative". However, the court has a wide discretion regarding the sanction of an RP and there is no presumption in favour of the court sanctioning a RP simply because the above conditions have been met.	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.
Commencing the process				
Who can commence?	The following can commence: (1) the debtor; (2) the administrator; or (3) the liquidator.	Primarily debtor can commence. However, it may also be commented by (1) any creditor (although as a practical matter it is very difficult for them to do so, as they are unlikely to have access to sufficient information) (2) any member of the company (3) a liquidator of the company (4) an administrator of the company.	As per SoA.	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.
Is shareholder's consent required to commence proceeding?	No, but members'/shareholders' consent is required to approve the CVA (see above).	No	No	No

	Company voluntary arrangement (CVA)	Scheme of arrangement (SoA)	Restructuring plan (RP)	Administration
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 there can be inter-conditional RPs, e.g., where approval of a SoA by all entities is a condition precedent to the RP 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 CVA, SoA and RP is proposed within an administration, those processes' requirements must be complied with.
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).	There is heightened court involvement at class meetings and approval of the RP. A court can refuse to convene class meetings or approve the RP, even if approved by statutory majorities. The RP can be challenged in court at the stage at which class meetings are convened (the convening hearing) or sanction stage (the sanction hearing).Despite being a relatively new restructuring tool, the courts have already considered a number of contested RPs (e.g. Re Virgin Active Holdings Ltd, which the court ultimately sanctioned, and Re Hurricane Energy Plc, which the court refused to sanction).	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, SoA and RP 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 retains its management powers. In particularly complex SoAs, a scheme supervisor may be appointed to adjudicate on scheme claims.	Debtor retains its management powers.	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 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.	Limited prescribed matters must be set out in the explanatory statement, giving considerable flexibility to those proposing the RP. 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.

	Company voluntary arrangement (CVA)	Scheme of arrangement (SoA)	Restructuring plan (RP)	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.	As per CVA. There is no restriction on which types of companies can propose a RP.	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.	While it is possible, in theory, for creditors to propose a RP, 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 continuation of incumbent management control?	Yes, subject to provisions of CVA and oversight of the CVA supervisor.	Yes, subject to provisions of SoA.	Yes, subject to provisions of RP.	No. Directors' powers cease unless permitted by administrators.

	Company voluntary arrangement (CVA)	Scheme of arrangement (SoA)	Restructuring plan (RP)	Administration
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	There is no automatic stay unless (i) the debtor is in an administration process, in which case administration moratorium will apply; or (ii) the debtor benefits from the free-standing moratorium under Part A1 of the Insolvency Act 1986, introduced by the Corporate Insolvency and Governance Act 2020, effective from 26 June 2020. The Part A1 moratorium allows financially distressed incorporated entities a short breathing space from enforcement by certain types of creditors but is not applicable to financial creditors. Debt owed to such creditors that falls due during the moratorium must continue to be paid for the moratorium to remain in force. The moratorium can be obtained through a court filing without creditor consent but can only endure for a maximum of 40 business days without such consent or a court order. Only certain companies listed under Corporate Insolvency and Governance Act 2020 are eligible, so it is not a tool available for all debtors.	There is no automatic stay, unless combined with an administration process, in which case the administration moratorium will apply or the company benefits from the free-standing moratorium under Part A1 of the Insolvency Act 1986. 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 bondholders (e.g., Metinvest standstill scheme).	As per SoA.	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 or rescuer financing or superpriority or priming financing?	No	No, unless approved by creditors as part of the SoA.	No, unless approved by creditors as part of the RP.	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 procedure be used to implement debt-to-equity swap?	Yes, but it is 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	Yes, through pre-packaged sale, CVA , SoA or RP.
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.	As per SoA.	No.

	Company voluntary arrangement (CVA)	Scheme of arrangement (SoA)	Restructuring plan (RP)	Administration
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. There are less recognition options available post-Brexit as the EU Insolvency Regulation now only applies to CVAs commenced before 23:00 on 31 January 2020.	There is recognition under the domestically adopted version of UNCITRAL (e.g., under Chapter 15 in the US) or other applicable conflict of laws principles and/or treaties. There are less recognition options available post Brexit as the Judgments Regulation (which was the most common way of obtaining recognition in the European Union) can only be relied on in relation to proceedings commenced before 23:00 on 31 January 2020. Accordingly recognition must be sought on other bases (e.g. local law, UNCITRAL, Rome I Regulation and potentially, the Hague or Lugano Convention)	The English courts have held that RPs are materially distinguishable from a SoA, due to the requirement for the debtor to encounter or be likely to encounter financial difficulties. As a result, RPs have been held to be insolvency proceedings within the bankruptcy exclusion of the Lugano Convention (Gategroup). Based on this judgment, the Lugano Convention and the Hague Convention will not apply to RPs. Therefore, recognition is more difficult and must be sought on other bases (e.g. local law, UNICTRAL, Rome I Regulation).	There is recognition under the domestically adopted version of UNCITRAL (e.g., under Chapter 15 in the US) or other applicable conflict of laws principles and/or treaties. There are less recognition options available post-Brexit as, EU Insolvency Regulation now only applies to administrations commenced before 23:00 on 31 January 2020.
Has the UNCITRAL Model Law been adopted?	Yes, it has been enacted into UK law by the Cross-Border Insolvency Regulations 2006.	Yes, it has been enacted into UK law by the Cross-Border Insolvency Regulations 2006.	Yes, it has been enacted into UK law by the Cross-Border Insolvency Regulations 2006.	Yes, it has been enacted into UK law by the Cross-Border Insolvency Regulations 2006.
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.	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.

	Company voluntary arrangement (CVA)	Scheme of arrangement (SoA)	Restructuring plan (RP)	Administration
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 example, 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.	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.
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 unsecured creditors	As per CVA. Preferential and secured creditors will form different classes to unsecured creditors	Statutory order of priority: ■ fixed Charges/Creditors with a proprietary interest in assets ■ moratorium debts and priority moratorium debts subject to a Part A1 moratorium ■ 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

	Company voluntary arrangement (CVA)	Scheme of arrangement (SoA)	Restructuring plan (RP)	Administration
				All property in which the company has a beneficial interest will fall within its insolvent estate and be available 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).
Do pension liabilities have any priority over other unsecured claims?	N/A	N/A	N/A	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.
Is it possible to challenge prior transactions?	N/A	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, SoA and RP this is only a concern if administration or insolvent winding-up follow.)

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European Union

1. Low level of harmonization of Restructuring and Insolvency law in the European Union

Restructuring and insolvency law is far from being fully harmonized at the European level. While a harmonized restructuring and insolvency law of the European Union ("EU") does not exist as of now, that could change in the future (and, as further outlined below, an important first step has been taken recently with the EU Restructuring Directive). Notwithstanding the principle of "subsidiarity" (article 5 para 3 of the Treaty on the European Union) which describes the principle of a limited transfer of competences from the EU Member States ("Member States") to the EU, it is generally recognized that the EU would have the competence to impose a further harmonization of the insolvency laws of the Member States under Article 115 of the Treaty on the Functioning of the European Union. Such harmonization would need to be done with the aim of enhancing the functioning of the common market and through the legislative instrument of an EU Directive, which would have to be implemented into the national law by the different Member States (instead of an EU Regulation, which would apply directly in all Member States).

However, until recently the EU has been reluctant to take significant steps in this direction. Insolvency law is traditionally a very national field of law which concerns important sovereign tasks with a lot of national particularities. After all, an insolvency can be described as the enforcement into and the realization of the debtor's assets through an orderly and structured (court) process which is typically steered by a state-appointed insolvency representative with significant statutory powers. In consequence, the restructuring and insolvency laws of the various Member States reflect their different legislative cultures and they differ significantly even with regard to fundamental principles and aspects.

2. The European Insolvency Regulation

The existence of the (Recast) European Insolvency Regulation (Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015) ("EIR"), which has replaced its very similar predecessor of the year 2000 (Regulation (EC) 1346/2000), does not generally change the above described picture. The EIR does not provide for a material harmonization of the national insolvency laws, but rather provides a set of conflict of laws rules for the field of insolvencies. Most importantly, Article 3 of the EIR establishes the well-known "COMI" principle which says that the courts of the Member State within the territory of which the centre of the debtor's main interests ("COMI") is situated shall have jurisdiction to open insolvency proceedings. The EIR further specifies that the COMI shall be the place where the debtor conducts the administration of its interests on a regular basis and which is objectively ascertainable by third parties. Furthermore, the EIR ensures that the opening of insolvency proceedings in one Member State is recognized in all other Member States (although the recent Niki Airlines case has shown that conflicts may still arise).

3. The European Restructuring Directive

In 2019, the EU took a first big step in the direction of a material harmonization of restructuring and insolvency law in the EU Member States through the EU Restructuring Directive of 20 June 2019 (EUR 2019/1023) ("EU Restructuring Directive"). All 27 Member States were obliged to implement the EU Restructuring Directive at the latest by 17 July 2021 (but many Member States have made use of the option to prolong the deadline for implementation by one further year). The purpose of the EU Restructuring Directive is to reduce differences between the Member States regarding the range of procedures available to debtors in financial difficulties, which allow them to (financially) restructure their business. Up to now, some Member States do not have any dedicated restructuring tools or only procedures which allow the restructuring of businesses at a relatively late stage. In other Member States, restructuring is possible at a (very) early stage, but the procedures available are very formal or not as effective as they could be. The EU Restructuring Directive was also in part a reaction to the "forum shopping" phenomenon observed with continental European companies in a financial crisis especially using the English Scheme of Arrangements in order to restructure their debt.

The English Scheme of Arrangement, which is not an insolvency procedure, offers the possibility to implement a collectively binding debt restructuring on the basis of a majority decision of the creditors. Under these rules, a single "hold-out" creditor is in principle unable to block a reasonable restructuring (plan) if the majority of the creditors approves it. Many Member States did not offer such a valuable possibility outside of an insolvency procedure, with the consequence that debtors were often forced to enter insolvency proceedings, if a consensual out-of-court solution was not possible. However, in many cases, insolvencies are value-destructive and lower the prospects of recovery for creditors.

For these reasons, the EU Restructuring Directive made it mandatory for Member States to offer a "preventive restructuring framework" for companies in a financially distressed situation when there is a likelihood of insolvency, with a view to preventing the insolvency and ensuring the viability of the debtor. Distressed debtors should be given the possibility to (financially) restructure their debt under the protection of individual enforcement actions on the basis of the majority of the creditors' decisions. Moreover, according to the EU Restructuring Directive, new financing, interim financing and other restructuring-related transactions should be protected against avoidance actions in case the restructuring fails and the companies still file for insolvency. However, as is characteristic for directives, the Member States have some leeway in their implementation decisions. Some European Member States went ahead and their "national schemes of arrangement" have already entered into force (for instance The Netherlands and Germany). Other Member States are still to follow.

At the end of this process, we expect to see - at least with respect to the core principles - very similar preventive restructuring regimes in the different Member States.

4. Status of Implementation of the EU Restructuring Directive in Selected Member States

Please see the "New European Restructuring Schemes - Update May 2022" published by Baker McKenzie for an update of the status of the implementation of the EU Restructuring Directive in selected Member States.

France

Remark: France is a member of the European Union. Please refer to the European Union chapter to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. The EU Restructuring Directive has been implemented in France in an order dated September 15, 2021, which applies effective October 1, 2021.

	Conciliation (Conciliation)	Safeguard proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation proceedings (Liquidation judiciaire)
Initial considerations				
Can you take security over all types of assets, including accounts receivable?	Yes. Generally, creditors can take a security interest over all types of assets, including accounts receivable. Taking security interest requiresspecification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, nonpossessory pledge and possessory pledge.	Creditors can take a security interest over all types of assets, including accounts receivable, 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 requiresspecification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, nonpossessory pledge and possessory pledge.	Creditors can take a security interest over all types of assets, including accounts receivable, up to the day preceding the opening of rehabilitation proceedings. However, security taken in the pre-rehabilitation hardening period may be subject to challenges. 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 specification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, nonpossessory pledge and possessory pledge.	Creditors can take a security interest over all types of assets, including accounts receivable, up to the day preceding the opening of liquidation proceedings. However, security taken during the pre-liquidation hardening period may be challenging. Taking security after the opening of liquidation proceedings is very unlikely.
What is the nature of the insolvency process?	A confidential out-of-court insolvency or a pre-insolvency process intended to avoid the debtor entering into a formal insolvency process involving either: ■ The negotiation of an out-of-court payment plan with creditors ■ A prepacked asset sale ■ (3) A prepacked plan (accelerated safeguard)	A court process to effect a financial and/or corporate restructuring ends with a court judgment approving the safeguard plan. There are two types of safeguard proceedings: ■ Regular safeguard proceedings (proceedings commenced by the debtor to effect a restructuring where there is no requirement to have a prior failed conciliation) ■ Accelerated safeguard proceedings (proceedings used to cram down dissenting creditors following a conciliation, whether they are financial or nonfinancial creditors)	A court process to restructure cash-insolvent but viable companies leading to either: ■ A court ruling approving a rehabilitation plan (plan de redressement par voie de continuation) ■ 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 either: ■ An individual asset sale ■ A sale of the business as a going concern (plan de cession) A simplified liquidation proceeding can be opened toward companies that do not own any real estate assets, pursuant to specific turnover and employee criteria.

	Conciliation (Conciliation)	Safeguard proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation proceedings (Liquidation judiciaire)
What is the solvency requirement for a company to file a case in this jurisdiction?	Debtors must be neither: ■ Cash insolvent ■ (2) Cash-insolvent for less than 45 days	Debtors must be facing difficulties that they cannot overcome alone, but must not be cash-insolvent.	Debtors must be cash-insolvent (cessation des paiements) with the prospect of recovery.	Debtors must be cash-insolvent (cessation des paiements) with no prospect of recovery.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	No. Regulation (EU) 2015/848 on insolvency proceedings does not apply to conciliation proceedings.	Yes	Yes	Yes
Is restructuring of both secured and unsecured claims possible?	Yes	Yes Note: The court (tribunal de commerce) is not able (on its own initiative) to order the write-down of any liability.	Same as in safeguard proceedings.	No
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	N/A	Creditors may be classed in classes of affected parties (classes de parties affectées) for voting purposes. In both accelerated safeguard proceedings and regular safeguard proceedings, the claims of creditors and shareholders are put into separate classes for purposes of voting and treatment under the continuation plan. The constitution of classes is made under the responsibility of the court-appointed administrator (administrateur judiciaire) who must gather creditors sharing a sufficient community of interests within the same class based on verifiable criteria they must benefit from equal treatment. The approval decision of the continuation plan of each class is taken by a two-thirds majority of the votes held by the members of such class casting a vote. Note: Any agreement between creditors to subordinate their claims must be taken into account under the terms of the plan.	Same as in safeguard proceedings, except that below the mentioned thresholds, the constitution of classes of affected parties can also be asked by the court-appointed administrator (administrateur judiciaire).	N/A

	Conciliation (Conciliation)	Safeguard proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation proceedings (Liquidation judiciaire)
		Accelerated safeguard proceedings: The constitution of classes of affected parties is mandatory and automatic in the frame of accelerated safeguard proceedings. **Regular safeguard proceedings:** The constitution of classes of affected parties is mandatory only if certain thresholds are reached: ■ The debtor has more than 250 employees and an annual turnover of more than EUR 20 million. ■ The debtor has more than EUR 40 million in annual turnovers. Also, the constitution of classes of affected parties is mandatory for the holding company if the thresholds mentioned above are reached by the companies it controls. Below such thresholds, the constitution of classes of affected parties remains optional at the debtor's request and is subject to the insolvency judge's approval.		
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	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 the safeguard plan provides for share capital changes (such as capital increase or decrease). One or more classes of shareholders are constituted, where applicable, if they are affected by the safeguard plan (e.g., debt-to-equity swap).	Same as in safeguard proceedings.	N/A

	Conciliation (Conciliation)	Safeguard proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation proceedings (Liquidation judiciaire)
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	N/A	Yes, as part of the classes of affected parties. In order to implement the cross-class cramdown mechanism, the court must verify that one of the following two criteria are met: ■ A majority of the classes of affected creditors has voted in favor of the plan, provided that at least one of those classes is a secured creditors' class or is senior to the unsecured creditors' class. ■ Alternatively, at least one of the classes of affected creditors has voted in favor of the plan, i.e., a class other than an equity holders' class or any other class that is not "in the money" (i.e., which, after determining the value of the debtor as a going concern, could reasonably be expected not to be entitled to any payment or retain any interest while applying for the distribution priority order in the context of a judicial liquidation or an asset sale plan). The court shall verify, in accordance with the "best interests test," that any affected creditors that voted against the plan is not in a less favorable situation than it would have been in the event of judicial liquidation, an asset sale plan or a better alternative solution.	Same as in safeguard proceedings.	N/A
Commencing the process				
Who can commence?	■ Debtor	■ Debtor	■ Debtor ■ Any creditor(s) ■ The public prosecutor	■ Debtor ■ Any creditor(s) ■ The public prosecutor
Is shareholders' consent required to commence proceedings?	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.	Same as in safeguard proceedings.	Same as in safeguard proceedings.
Is there an ability to consolidate group estates?	N/A	No. Practically, it is possible to coordinate group insolvencies by appointing the same court-appointed administrator(s).	Same as in safeguard proceedings.	N/A

	Conciliation (Conciliation)	Safeguard proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation proceedings (Liquidation judiciaire)
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 proceedings. 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). During the procedure, the debtor can request payment delays to the insolvency court in case the debtor is served with a notice of default or sued by a creditor during the negotiations. Moreover, if a creditor called to the conciliation does not accept (within the time limit set by the conciliator) the request made by the conciliator to suspend the payment of the creditor's claim for the duration of the procedure, the debtor may request the court to defer or reschedule payment of the amounts due, within the time limit of the conciliation.	The court is involved in the process. The court opens proceedings and ultimately approves the plan. Specialized courts have jurisdiction over large companies fulfilling certain conditions. The insolvency judge supervises the court-appointed administrator and the court-appointed creditor's representative and grants certain authorizations (e.g., for settlement agreements, disposal of individual assets etc.). The process is carried out by the court-appointed administrator and the court-appointed creditor's representative.	Same as in safeguard proceedings.	The court is involved in the process. The court opens the proceedings. The insolvency judge supervises the court-appointed liquidator and grants certain authorizations (e.g., sale of the assets).
Who manages the debtor?	The debtor remains in possession. The court appoints a conciliator that has a supervisory role and assists with third-party negotiations. Note: The debtor may propose the "conciliator," but the court is free to appoint a different one.	The debtor remains in possession and management is supervised by the court-appointed administrator. All management decisions that go beyond ordinary actions must be approved by the insolvency judge beforehand. The court appoints an insolvency judge, the court-appointed administrator(s), the court-appointed creditor's representative(s) and, upon their request, one to five advisers (from the creditors).	The debtor remains in possession and management is assisted by the court-appointed administrator. The court sometimes decides that the court-appointed administrator's mandate is to ensure the management of the company. The insolvency judge must approve all management decisions that go beyond ordinary actions beforehand. The court-appointed administrator must approve all cash payments. The court appoints an insolvency judge, the court-appointed administrator(s), the court-appointed creditor's representative and, upon their request, one to five advisers (from the creditors).	The debtor management does not remain in control. The court-appointed liquidator takes control of the debtor. The court appoints an insolvency judge, a liquidator and one to five advisers (from the creditors).

	Conciliation (Conciliation)	Safeguard proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation proceedings (Liquidation judiciaire)
		At least two court-appointed administrators and two court-appointed 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: ■ Owns at least three secondary establishments located in the jurisdiction of a commercial court other than the one the debtor is registered in ■ Owns or controls at least two companies against which safeguard, rehabilitation or liquidation proceedings have commenced ■ Is owned or controlled by a company against which safeguard, rehabilitation or liquidation proceedings have commenced and owns or controls another company against which safeguard, rehabilitation or liquidation proceedings have commenced	At least two court-appointed administrators and two court-appointed 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: ■ Owns at least three secondary establishments located in the jurisdiction of a commercial court other than the one the debtor is registered in ■ Owns or controls at least two companies against which safeguard, rehabilitation or liquidation proceedings have commenced ■ Is owned or controlled by a company against which safeguard, rehabilitation or liquidation proceedings have commenced, and owns or controls another company against which safeguard, rehabilitation or liquidation proceedings have commenced.	
What is the level of disclosure of process to voting creditors?	N/A	There is no disclosure concept under French law regarding 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.).	Same as in safeguard proceedings.	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 Prudential Supervision and Resolution Authority (Autorité de contrôle prudential et de résolution (ACPR)) supervises their derogatory insolvency proceedings. Notwithstanding being excluded from Chapter 6 of the French Commercial Code, credit institutions are governed by the following provisions of the French Monetary and Financial Code: ■ Article L. 613-24 ■ Article L. 310-25 of the French Insurance Code ■ Article L. 212-15 of the French Mutual Code			
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 rehabilitation proceedings. There is no statutory period; it depends on the court's workload.	Same as in rehabilitation proceedings.

	Conciliation (Conciliation)	Safeguard proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation proceedings (Liquidation judiciaire)
Effect of process				
Does debtor remain in possession with continuation of incumbent management control?	Yes. The debtor management remains in possession (including powers of disposal).	Yes. When a court-appointed administrator is appointed, the debtor management retains its powers, and the court-appointed administrator's powers are limited to overseeing debtor's decisions. Where no court-appointed administrator (small companies) is appointed, the debtor's management retains all powers, including the power to write checks and conclude new contracts.	Yes. The debtor remains in possession and the court-appointed administrator assists the debtor in managing the business and assets, and only in exceptional circumstances (e.g., in the case of wrongful trading) does the court-appointed administrator replace debtor management (court to determine).	No. Power to manage the business and dispose of the debtor's assets is transferred to the court-appointed liquidator.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	N/A	There is an automatic stay upon the opening of safeguard proceedings. The stay prevents the enforcement of judgments obtained prefiling: collection activities, foreclosures, contract terminations and repossessions of property, subject to certain limited statutory exceptions (e.g., setoff and/or payment for the return of goods subject to retention of title clause (clause de reserve de propriété)).	Same as in safeguard proceedings.	Same as in safeguard proceedings.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	Yes There is 100% superpriority for "new money" injected at the time of the court-confirmed conciliation agreement or during the process (if conciliation is ultimately confirmed).	Yes There is priority for "post-money" injected during the observation period, with prior authorization from the insolvency judge, for the purposes of financing the business during the process. This priority also results in cash contribution to the debtor for implementation or modification of the safeguard plan. The priority for "post-money" is paid off after the priority for "new money" in the ranking of creditors' claims.	Same as in safeguard proceedings.	N/A

	Conciliation (Conciliation)	Safeguard proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation proceedings (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, shareholders 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. (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 either: (i) A forced sale of all or part of the shares (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 European Insolvency Regulation (EIR) or other applicable conflicts of laws, principles and/or treaties in other countries. In order for the proceedings to be recognized outside of France and outside the European Union, the opening judgment of the safeguard proceedings must be enforced in the country where the pursuing creditors are located by using the exequatur process. Judgments rendered in the member states may be enforced within the European Union without prior exequatur.	Same as in safeguard proceedings.	Same as in safeguard proceedings.

	Conciliation (Conciliation)	Safeguard proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation proceedings (Liquidation judiciaire)
Has the UNCITRAL Model Law been adopted?	No	No	No	No
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 remains in possession of its assets.	The debtor continues to carry on its business as it always does. The debtor remains in possession of its assets.	The debtor is not allowed to carry on its business (the court may authorize temporary continuation of the activity). The debtor is divested from its assets.
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:** Managers, 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:** - There is liability for assets shortfall (responsabilité pour insuffisance d'actif). - 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).
What is the order of priority of claims?	N/A	The creditors' rank on insolvency is complex and is now detailed by the French Commercial Code. The following basic principles apply: - Since there is a stay on proceedings, creditors cannot enforce their rights relating to pre-insolvency debts. - A portion of an employee's prepetition claims benefit from a preferential status.	Same as in safeguard 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).

	Conciliation (Conciliation)	Safeguard proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation proceedings (Liquidation judiciaire)
		■ Providers of "new money" are part of a workout agreement during conciliation proceedings. ■ In safeguard and rehabilitation proceedings, post-petition claims benefit from a statutory privilege provided that they either: – Arise for the purposes of funding the observation period, such as "post-money" claims – 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. ■ Privileged post-petition claims must be paid when they fall due. If not, these claims are paid after the "post-money" according to the legal ranking of claims.		
Do pension liabilities have any priority over other unsecured claims?	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.	Same as in safeguard proceedings.	Same as in safeguard proceedings.
Is it possible to challenge prior transactions?	N/A	N/A	**Hardening period (période suspecte):** From the date of cash flow insolvency of the debtor and the opening ruling of the rehabilitation proceedings (can be up to 18 months) Some transactions are automatically void; that is, the court must declare these transactions void on a petition by the court-appointed 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). These transactions are listed in the French Commercial Code.	Same as in rehabilitation proceedings.

	Conciliation (Conciliation)	Safeguard proceedings (Sauvegarde)	Rehabilitation proceedings (Redressement judiciaire)	Liquidation proceedings (Liquidation judiciaire)
			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 the petition by the court-appointed administrator, the liquidator or the public prosecutor) if proper evidence is brought before the court that the contracting party knew the company's insolvency at the time of the payment or transaction. When dealing with intragroup 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).	

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Remark: Germany is a member of the European Union. Please refer to the European Union chapter to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. The European Restructuring Directive has been implemented in Germany in a law called "StaRUG," which took effect on 1 January 2021 (please see below in "Restructuring regime under StaRUG" for more details).

	Regular insolvency proceedings	Insolvency plan/protective shield	Restructuring regime under StaRUG
Initial considerations			
Can you take security over all types of assets, including accounts receivable?	In principle, you can take security over all types of assets; however, taking securities over assets follows German collateral security law, whereupon securities must satisfy the principle of certainty in regard to specification; a third party must be able to identify exactly which assets are referred to. References to "working capital" or "50% of the assets" as such would not be specific enough. The most common forms of security over **immovable** assets are the following: ■ Land charge (Grundschuld) ■ Mortgage (Hypothek) Notarization and registration in the land register (Grundbuch) are required for both. The most common forms of security over **movable** assets are: ■ (Prolonged) retention of title ((verlängerter) Eigentumsvorbehalt) ■ Security transfer (Sicherungsübereignung) ■ Security assignment of receivables (Sicherungsabtretung) ■ Pledge (Pfandrecht)	Within a protective shield/insolvency plan, the same fundamental principles of German collateral security law apply.	Within a restructuring regime under StaRUG, the same fundamental principles of German collateral security law apply.

	Regular insolvency proceedings	Insolvency plan/protective shield	Restructuring regime under StaRUG
What is the nature of the insolvency/ restructuring process?	Court process leading to: (1) A (prepackaged) asset sale, (2) a liquidation or (3) an insolvency plan often concerning the restructuring of the legal entity.	**Protective shield:** A three-month "protection" period (prior to insolvency proceedings) during which the debtor remains in charge of the business under the supervision of a court-appointed insolvency custodian and has to develop an insolvency plan. However, the debtor must still file a petition for the opening of insolvency proceedings to start the protective shield process. Insolvency plan: A process within insolvency proceedings with the aim to restructure a debtor's debts and business	**Restructuring framework:** The debtor remains in charge of the business; a court-appointed restructuring professional (Restrukturierungsbeauftragter) can be involved only upon application of the debtor or in sensitive cases (e.g., in case of inclusion of consumer claims in the restructuring plan; general stabilization order; if it is foreseeable that the restructuring objective can only be achieved by way of a cross-class cramdown). **Restructuring moderation:** The debtor remains in charge of the business; a court-appointed restructuring moderator (Sanierungsmoderator) can be involved only upon the application of the debtor.
What is the solvency requirement for a company to file a case in this jurisdiction?	The debtor must be: ■ Illiquid: unable to meet payment obligations when due ■ Imminent illiquidity: likely to become cash-flow insolvent (imminent illiquidity alone triggers the right, but not an obligation of the managing directors to file for insolvency proceedings) ■ Overindebted: Available assets do not cover liabilities unless the debtor is more likely to survive than not.	**Protective shield:** ■ The debtor must not be illiquid. ■ The debtor must be imminent illiquid or overindebted. ■ Intended restructuring must not be evidently futile. **Insolvency plan:** The debtor must be (imminent) illiquid and/ or overindebted.	**Restructuring framework:** Imminent illiquidity is required; however, a debtor must not be illiquid/overindebted. **Restructuring moderation:** Debtors need to be in financial/economic difficulties (not necessarily in imminent illiquidity); however, debtors must not be illiquid/overindebted.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	Yes	Yes	Yes
Is restructuring of both secured and unsecured claims possible?	Yes	Yes	Yes
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	Yes **Classes:** (1) secured creditors; (2) unsecured creditors; (3) subordinated creditors (may be subclassed); and (4) shareholders	Same as in regular insolvency proceedings	Same as in regular insolvency proceedings
Are shareholders entitled to vote on a plan?	N/A	Yes, as far as they are affected by the insolvency plan.	**Restructuring plan:** Yes, as far as they are affected by the restructuring plan.

	Regular insolvency proceedings	Insolvency plan/protective shield	Restructuring regime under StaRUG
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes. Dissenting creditors are bound if required creditor approvals/majorities within the creditor committee and/or creditor assembly are obtained.	Yes Majority decisions within a class of creditors are possible (intragroup). Further, there is the possibility of majority decisions between different classes of creditors (intergroup), so-called "cross-class cramdown." 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 insolvency plan and may suffer a 100% write-down.	**Restructuring plan:** Yes, if the restructuring plan is court-approved. 75% majority decisions within a class of creditors are possible (intragroup). Further, there is a possibility of simple majority decisions between different classes of creditors (intergroup), so-called "cross-class cramdown," if (1) the creditors' position under the restructuring plan is not expected to be worse than without a restructuring plan, (2) the creditors will receive an adequate return from the assets (plan value) and (3) a simple majority of the classes have approved the plan. The consenting groups must not be formed exclusively by shareholders or subordinated restructuring creditors. If a restructuring plan is not court-approved, the binding effect is only on consenting creditors. **Moderation settlement:** Even if court-approved, it is only binding on consenting creditors (inter partes).
Commencing the process			
Who can commence?	(1) The debtor or (2) any creditor(s), if the debtor is illiquid/overindebted	**Protective shield:** the debtor **Insolvency plan:** (1) The debtor, (2) the insolvency administrator/custodian or (3) the creditors' meeting/assembly may commission the insolvency administrator to propose an insolvency plan.	**Restructuring framework/restructuring moderation:** The debtor
Is the shareholders' consent required to commence proceedings?	No shareholder consent is required if filing for insolvency is mandatory, i.e., in case of illiquidity/overindebtedness. If filing is not mandatory (i.e., in case of imminent illiquidity), shareholder consent is generally required.	Same as in regular insolvency proceedings	**Restructuring framework:** Shareholder consent is likely required. **Restructuring moderation:** Shareholder consent is less likely required.
Is there an ability to consolidate group estates?	There is no possibility to consolidate group estates. Practically, it is possible to coordinate group insolvencies by appointing the same insolvency administrator(s) or, if there are several insolvency administrators for the different proceedings, by appointing a separate insolvency coordinator. Further, it is possible to concentrate insolvency proceedings over group companies at the same insolvency court.	Same as in regular insolvency proceedings	Similar to regular insolvency proceedings. There is no possibility to consolidate group estates. Practically, it is possible to coordinate group restructurings by appointing the same restructuring professional (Restrukturierungsbeauftragter) or, in case of a restructuring moderation, by appointing the same restructuring moderator (Sanierungsmoderator). Further, it is possible to concentrate restructuring proceedings over group companies at the same restructuring court.

	Regular insolvency proceedings	Insolvency plan/protective shield	Restructuring regime under StaRUG
Is there any court involvement?	There is limited court involvement. Proceedings are supervised by the insolvency court, which will include determining insolvency, initiating protective measures against the assets of the debtor, especially during the preliminary insolvency proceedings (e.g., stop any enforcement measures); and appointing an insolvency administrator/custodian.	**Protective shield:** The insolvency court determines the period in which a draft insolvency plan must be prepared; appoints a preliminary insolvency custodian (for a maximum of three months); and may order protective measures (e.g., stop any enforcement measures). **Insolvency plan:** The insolvency court supervises the process and confirms the insolvency plan. The court has the right to a 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 by the creditor and/or shareholder groups. 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 plan is approved by the creditors and, as the case may be, the shareholders, the plan must be confirmed by the court.	Yes; however, the scope and intensity of court involvement depend on restructuring measures chosen by the debtor. The court is involved inter alia in the following cases: ■ In case the debtor applies for some or all of the optional instruments of the stabilization and restructuring framework (i.e., judicial plan approval procedure, a preliminary judicial examination of issues relevant to the confirmation of the restructuring plan (preliminary examination), stabilization order and judicial plan confirmation) ■ In case the debtor applies for an optional restructuring professional or restructuring moderator ■ In case the appointment of a restructuring professional is mandatory ■ In case of an appointment of a creditors' committee (Gläubigerbeirat) ■ The abolition of a restructuring plan monitoring
Who manages the debtor?	An insolvency administrator usually runs the proceedings. However, the debtor may request that the management retains control of the debtor's assets and business under the supervision of a court-appointed insolvency custodian ("self-administration"); the court will approve this provided creditors' interests are not prejudiced. Certain actions may require the insolvency custodian's consent.	**Protective shield:** Management retains control of the debtor's assets under the supervision of a court-appointed insolvency custodian; the court will approve this provided creditors' interests are not prejudiced. Certain actions may require the insolvency custodian's consent. **Insolvency plan:** N/A	**Restructuring framework:** Management retains control of the debtor's assets. However, in most cases of a mandatory appointment of restructuring professional by the restructuring court (i.e., in case of inclusion of consumer claims in the restructuring plan; general stabilization order; if it is foreseeable that the restructuring objective can only be achieved by way of a cross-class cramdown), the restructuring court may order restrictions, e.g.: The restructuring court may authorize the restructuring officer to supervise the management of the business, to claim that incoming funds are to be accepted and that payments are effected by the restructuring professional only. The court may request that the debtor notifies the restructuring professional of any payments and that payments outside the ordinary course of business can only be effected with the consent of the restructuring professional. Furthermore, if the restructuring plan regulates all claims of all creditors, a creditors' committee (Gläubigerbeirat) may be appointed by the restructuring court. The creditors' committee has competencies similar to regular insolvency proceedings. All restrictions set forth above do not restrict the management's power to represent the debtor towards third parties. **Restructuring moderation:** Management retains full control of the debtor's assets.

	Regular insolvency proceedings	Insolvency plan/protective shield	Restructuring regime under StaRUG
What is the level of disclosure of the process to voting creditors?	Secured creditors and insolvency creditors can generally apply for insight into the insolvency court files.	A summary of the proposed insolvency plan is generally provided to all parties whose rights are modified by the insolvency plan.	**Restructuring plan:** The debtor's plan addressed to all parties affected by the plan must include (i) the complete restructuring plan together with annexes as well as (ii) a description of the costs of the restructuring proceedings already incurred and those still to be expected, including the remuneration of the restructuring professional.The plan offer must indicate with which claims or rights the respective plan affected party is included in the restructuring plan, to which groups the plan affected party is assigned, and which voting rights the claims and rights grant. **Restructuring settlement:** Full disclosure of the settlement plan
What entities are excluded from customary insolvency or reorganization 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 that are subject to state supervision. Specific rules apply to credit institutions (see German Banking Act, KWG). Only the Federal Financial Supervisory Authority (BaFin) can apply for insolvency proceedings over the assets of a credit institution. The insolvency proceedings will generally progress in accordance with the provisions of the German Insolvency Code (InsO). Specific rules also apply to insurance companies (see German Insurance Supervision Act, "VAG"). Instead of the company itself and/or any creditor, only the BaFin or the individual competent state authorities can apply for insolvency proceedings over the assets of an insurance company. The insolvency proceedings will generally progress in accordance with the provisions of the German Insolvency Code (InsO).	All entities subject to customary insolvency proceedings may also be subject to protective shield proceedings/insolvency plans. Regarding credit institutions and insurance companies, insolvency proceedings will generally progress in accordance with the provisions of the German Insolvency Code (InsO), which encompass the regular insolvency plan provisions.	**Restructuring framework/restructuring moderation:** In principle, all entities subject to customary insolvency proceedings may also become subject to restructuring proceedings (including restructuring moderation). However, for natural persons, this only applies to the extent that they are entrepreneurially active. Companies in the financial sector within the meaning of § 1 para. 19 German Banking Act are excluded.
How long does it generally take for a creditor to commence liquidation of an insolvent company?	There is no strict timeline. This will strongly depend on the facts of the individual case. A creditor can apply for the opening of insolvency proceedings over a debtor's assets. The creditor must substantiate that the debtor is illiquid or overindebted. Before initiating the insolvency proceedings, the insolvency court has to hear the debtor first. Should the insolvency court conclude that the creditor's application 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	N/A

	Regular insolvency proceedings	Insolvency plan/protective shield	Restructuring regime under StaRUG
Effect of process			
Does the debtor remain in possession with continuation of incumbent management control?	Insolvency proceedings are usually run by an insolvency administrator. However, the debtor may request that the management retain control of the debtor's assets and business under the supervision of a court-appointed insolvency custodian ("self-administration"); the court will approve this provided creditors' interests are not prejudiced. Certain actions may require the insolvency 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/assembly, following the appointment of the insolvency administrator, the creditors may elect a different person to replace them.	**Protective shield:** Control of the debtor's assets under the supervision of a court-appointed insolvency custodian. The court will approve this, provided creditors' interests are not prejudiced. Certain actions may require the insolvency custodian's consent. **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.	**Restructuring framework:** Management retains control of the debtor's assets. However, in most cases of a mandatory appointment of restructuring professional by the restructuring court (i.e., in case of inclusion of consumer claims in the restructuring plan; general stabilization order; if it is foreseeable that the restructuring objective can only be achieved by way of a cross-class cram down), the restructuring court may order restrictions, e.g.: The restructuring court may authorize the restructuring officer to supervise the management of the business, to claim that incoming funds are to be accepted and that payments are effected by the restructuring professional only. The court may request that the debtor notifies the restructuring professional of any payments and that payments outside the ordinary course of business can only be effected with the consent of the restructuring professional. Furthermore, if the restructuring plan shall regulate all claims of all creditors, a creditors' committee (Gläubigerbeirat) may be appointed by the restructuring court. The creditors' committee has competencies similar to regular insolvency proceedings. All restrictions set forth above do not restrict the management's power to represent the debtor toward third parties. **Restructuring moderation:** Management retains full control of the debtor's assets.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	No automatic stay, but the insolvency court is required to take all necessary measures to avoid any detrimental effects to the financial status and estate of the debtor (which may include an order for the stay of enforcement of secured rights). Such a moratorium would apply worldwide in respect to all assets of the debtor irrespective of where they are located, but it is a different question whether a local court would accept and enforce such a moratorium. Upon the opening of regular insolvency proceedings, foreclosure and collection activities are or may be limited, and the enforcement of prefiling judgments is suspended.	Same as in regular insolvency proceedings	No automatic stay/moratorium. Moratorium/stay is possible on the debtor's application relating to restructuring claims. Excluded claims are: ■ Claims of employees arising from or in connection with the employment relationship, including rights arising from commitments to occupational pension schemes ■ Claims to arise out of intentional torts ■ Fines, administrative fines and periodic penalty payments as well as such collateral consequences of a criminal offense or administrative offense that oblige a monetary payment If the debtor is a natural person, claims and rights to separate satisfaction that have no connection with their business activity are also exempted.

	Regular insolvency proceedings	Insolvency plan/protective shield	Restructuring regime under StaRUG
			In general, the stabilization order is issued if the restructuring plan submitted by the debtor is complete and conclusive and no circumstances are known indicating that: ■ The restructuring plan is based on inaccurate facts in material respects. ■ The restructuring is futile because there is no prospect that the restructuring plan would be accepted by the parties or confirmed by the court. ■ The debtor is not yet imminent illiquid. ■ A stabilization order is not necessary to achieve the restructuring objective. Regarding the worldwide effect of the stay/moratorium, same as in regular insolvency proceedings applies.
Is there a provision for debtor-in-possession or rescuer financing or superiority or priming financing?	There is no special legal provision, but loans to the insolvency estate can have priority status if granted during preliminary proceedings with court approval or if granted following the opening of main insolvency proceedings.	Yes, the insolvency plan may provide for new lenders to have priority over unsecured creditors.	The restructuring plan may include provisions for loans or other credits (including their collateralization) that are necessary to finance the restructuring on the basis of the restructuring plan. In consequence, in the case of a court-approved restructuring plan, new lenders can benefit from the "safe harbor" regarding clawback/avoidance provisions as well as lender liability. The Restructuring Plan can provide for a privileged ranking of the new financing.
Is there debt-to-equity swap?	No	Yes, in accordance with the terms of the insolvency plan and provided that the swapping creditor provides consent.	Yes, in accordance with the terms of the restructuring plan or the restructuring settlement agreement.
Are third-party releases available?	Yes	Yes, this is available in accordance with the terms of the insolvency plan.	Yes, this is available in accordance with the terms of the restructuring plan or the restructuring settlement agreement.
Are the proceedings recognized abroad?	Yes, in accordance with European Insolvency Regulation or other applicable conflicts of laws principles and/or treaties for other countries.	Same as in regular insolvency proceedings	Yes, it is based on European Insolvency Regulation (if public process) and/or Brussels I Regulation (if nonpublic).
Has the UNCITRAL Model Law been adopted?	No	No	No
Can a debtor continue to carry on business during insolvency proceedings?	Yes, if the insolvency administrator and/or creditor committee/assembly agrees and the continuation is not detrimental to the creditors.	Same as in regular insolvency proceedings	In general, the commencement of restructuring proceedings does not restrict the debtor from continuing to carry on business during the restructuring proceedings. Any internal restrictions, e.g., by the restructuring professional or the creditors' committee, do not have any external effect and thus do not limit the management's power to continue the debtor's business.

	Regular insolvency proceedings	Insolvency plan/protective shield	Restructuring regime under StaRUG
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 overindebted; 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	Same as in regular insolvency proceedings	Same as in regular insolvency proceedings; however, certain modifications apply during restructuring proceedings [89 StaRUG].
What is the order of priority of claims?	**Statutory order of priority:** **(1)** Segregation rights (e.g., simple title retention) **(2)** Secured creditors, especially right of separation **(3)** 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) **(4)** Unsecured claims **(5)** Subordinated claims (intragroup loans, fines, interest) **(6)** Equity	Same as in regular insolvency proceedings	Same as in insolvency proceedings, since the insolvency ranking needs to be reflected for the plan to pass the relevant comparison tests, which apply if challenged.
Do pension liabilities have any priority over other unsecured claims?	Company pension schemes are secured by the pension security association (Pensions-Sicherungs-Verein (PSV)) and, potentially, by other security arrangements. These arrangements are not affected by insolvency proceedings. The pension liability usually transfers to the PSV. Thus, the debtor has no direct liability to employees. Employees submit claims to the PSV and, if payments are made, the PSV claims against the debtor as an unsecured creditor. However, if the pension claim arises after the insolvency proceedings are opened, they are "preferred" claims that rank above unsecured claims in any distribution.	Same as in regular insolvency proceedings	The claims of employees arising out of or in connection with the employment relationship (including pension liabilities) cannot be included in the restructuring plan.

	Regular insolvency proceedings	Insolvency plan/protective shield	Restructuring regime under StaRUG
Is it possible to challenge prior transactions?	Yes **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 provisions/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. [COVInsAG beachten]	Same as in regular insolvency proceedings [COVInsAG beachten]	No With respect to insolvency clawback, in subsequent insolvency (i.e., if the restructuring fails), the law provides for a "safe harbor" (89,90 StaRUG).
Is state support for distressed businesses available?	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 court opens the main insolvency proceedings.	Same as in regular insolvency proceedings	N/A

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Hong Kong

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
Initial considerations			
Can you take security over all types of assets, including accounts receivable?	Security can be taken over by both immovable and movable property. Common forms of security over immovable property include legal mortgage, equitable mortgage and fixed charges. Common forms of security over movable property include mortgages, fixed charges and floating charges; in particular floating charges over accounts receivables.	Security can be taken over by both immovable and movable property. Common forms of security over immovable property include legal mortgage, equitable mortgage and fixed charges. Common forms of security over movable property include mortgages, fixed charges and floating charges; in particular floating charges over accounts receivables.	Security can be taken over by both immovable and movable property. Common forms of security over immovable property include legal mortgage, equitable mortgage and fixed charges. Common forms of security over movable property include mortgages, fixed charges and floating charges; in particular floating charges over accounts receivables.
What is the nature of the insolvency process?	There is a distinction between personal and corporate insolvency in Hong Kong. **Personal insolvency** Personal insolvency is known as bankruptcy, which is governed by the Bankruptcy Ordinance (Cap. 6) ("BO"). There are both compulsory bankruptcy processes whereby a creditor or debtor files for a bankruptcy petition in Court under the BO. As an alternative to bankruptcy, there are individual voluntary arrangements under the BO. **Corporate insolvency** Corporate insolvency is typically referred to as liquidation. Under the Companies (Winding-Up and Miscellaneous Provisions) Ordinance (Cap. 32) (CWUMPO), there are three types of processes: **Members' voluntary 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.	A scheme of arrangement is not an insolvency process. It is a court process involving: ■ 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 ■ The court exercising its discretion to order a meeting of the creditors or members (or a class thereof) ■ The court exercising its discretion to sanction the scheme, where relevant persons at the court-directed meeting have already approved the scheme The meetings of creditors/members are out of court processes, and the company may obtain creditor/member support via restructuring support agreements. The meetings shall be held in accordance to any guidelines/orders laid out by the court, and the results of the meetings shall be reported to the court. . The court will consider the fairness of the scheme at the sanction stage, notwithstanding approval by creditors/ members (as applicable).	This is a purely contractual agreement between the company and its creditors to reschedule the company's debts, which does not involve the court (unless a scheme of arrangement is included as part of the restructuring process); and is not, strictly speaking, an insolvency process. There is currently no statutory corporate restructuring regime unlike certain offshore jurisdictions. Nor can provisional liquidators be appointed in Hong Kong purely for restructuring purposes (Re Legend International Resorts Ltd [2006] 2 HKLRD 192). The appointment of provisional liquidators (e.g., to preserve assets) operates as a stay of actions and proceedings against a company in Hong Kong. There can be an intersection between reorganization, restructuring and workouts with insolvency processes. In certain cases, provisional liquidators can be given incidental powers to explore possible restructuring of debt by way of scheme of arrangement The Hong Kong Courts may recognize the powers of foreign soft-touch provisional liquidations and grant recognition orders that require third parties to obtain leave from the Hong Kong Companies Judge before commencing "action or proceeding … against the Company or its assets or affairs, or its property within the jurisdiction of this Court", provided that a winding-up petition has not yet been commenced in Hong Kong.

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
	Creditors' voluntary winding-up: 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. A company is wound up upon the court's winding-up order after hearing of a petition to wind-up submitted by a shareholder or a director or a creditor of the company, or regulators (e.g., the Securities and Futures Commission).		
What is the solvency requirement for a company to file a case in this jurisdiction?	**Personal insolvency** To determine if an individual is insolvent for bankruptcy petitions, the court determines whether the individual is "unable to pay his/her debts" as they fall due. There is a statutory presumption that a person is "unable to pay his/her debts" as they fall due when they fail to pay a statutory demand for a liquidated debt of HKD 10,000 or more within 21 days of the demand and have not applied to set aside the statutory demand. **Corporate insolvency:** **Members' voluntary winding-up:** The company must be solvent. No court application is filed. Various other steps will be required, including directors' resolutions and members' resolutions, and a certificate of solvency. **Creditors' voluntary winding-up:** The company must be insolvent. To determine insolvency, both (i) cash flow and (ii) balance sheet are relevant; and (iii) there is a statutory presumption that a company is "unable to pay its debts" when it fails to pay a statutory demand within 21 days (collectively, "Insolvency Tests"). No court application is filed. Various other steps will be required, including directors' resolutions and members' resolutions and notices to auditors and creditors. **Compulsory liquidation:** Inability to pay debts as they become due is a ground for compulsory liquidation. The company must be insolvent (see Insolvency Tests above).	There is no solvency requirement per se. However, in practice, the applicant to a creditors' scheme of arrangement will seek to demonstrate that the scheme is necessary to restructure the company's debts and that it is fair and beneficial to one or more classes of creditors. For instance, in a creditors scheme the applicant may try to show there is a real risk of default without the scheme and that the creditors would have a lower recovery in an insolvent liquidation scenario.	There is no solvency requirement. However, the answer to this question under the "Scheme of arrangement" section is repeated where the reorganization, restructuring or workout is by way of a scheme of arrangement.

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	**Personal insolvency** There are requirements that the individual is " domiciled" or "ordinarily resident in Hong Kong" or that they "carried on business in Hong Kong" for a prescribed period before the bankruptcy petition is issued; or alternatively, the debtor shall be "present in Hong Kong" on the day the bankruptcy petition was presented. **Corporate insolvency** A Hong Kong incorporated/registered company does not need to demonstrate COMI. 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 for COMI and "sufficient connection" under common law.	No. However, for schemes involving unregistered non-Hong Kong companies, the court will only sanction the scheme if there is a "sufficient connection with Hong Kong," i.e., the same test applied when considering whether to wind-up companies not registered in Hong Kong. There is a degree of similarity in the considerations for COMI and "sufficient connection."	No
Is restructuring of both secured and unsecured claims possible?	Yes. But secured creditors can seek to enforce their security. Secure assets remain outside of the bankruptcy (personal insolvency) or liquidation (corporate insolvency) estate unless a creditor gives up their security and claims as an unsecured creditor.	Yes. But secured creditors can seek to enforce their security and it would be difficult to cramdown an unsecured creditor.	Yes. But secured creditors can seek to enforce their security and it would be difficult to cramdown an unsecured creditor.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	**Corporate insolvency** Yes. Separate first meetings of creditors and shareholders are respectively held for voting on the appointment of liquidators and committee of inspection in a creditors' voluntary liquidation or compulsory liquidation scenario.	Yes. Different creditors and shareholders will be separated into different classes to vote on the scheme of arrangement.	N/A
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	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 requirement for shareholders' consent to be obtained prior to compulsory liquidation by creditor petition. Where the company/its directors' petition for winding-up is based on other grounds, shareholder approval may be required depending on the circumstances.	Subject to any corporate governance requirements, shareholders' resolution would not be required prior to a company's scheme of arrangement to restructure debt (unlike a scheme of arrangement for privatization). Shareholders who are also creditors of debts being restructured would typically be entitled to vote on a scheme qua creditor.	Shareholders' resolution is not normally required but it may depend on the terms and nature of the reorganization, restructuring and workout.

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes. All members/creditors are affected by the winding-up process.	Yes. If the scheme is approved, it is binding on all creditors (or shareholders) subject to that scheme.	N/A Unless the reorganization, restructuring or workout is by way of a scheme of arrangement, which binds minority dissenting creditors' whose debts form part of the scheme.
Commencing the process			
Who can commence?	Depending on the process, winding-up can be commenced by a shareholder, a creditor or the company itself. The court also has the discretion to order a company to be wound up on the application of regulators (e.g., upon application by the Secretary for Justice or by petition of the Securities and Futures Commission).	The company or any of the following may apply to the court to initiate a scheme of arrangement: ■ Any of its creditors (if the scheme is proposed to be entered into with the creditors) ■ Any of the creditors within a certain class (if the scheme is proposed to be entered into with that class of creditors) ■ Any of its members (if the scheme is proposed to be entered into with the members) ■ Any of the members within a certain class (if the scheme is proposed to be entered into with that class of members) ■ Provisional liquidators or liquidators of the company	The company and its creditors can agree on a workout at any time. The company can commence reorganizations, restructuring and workouts as it sees fit.
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 by creditor petition.	A shareholders' resolution would be required in scheme meetings for a company's scheme of arrangement with members.	No. But this would depend on the terms of the arrangement, reorganization, restructuring and workout depending on the circumstances, and the company's corporate governance requirements.
Is there an ability to consolidate group estates?	No	No	This would depend on the terms of the arrangement.
Is there any court involvement?	Throughout the administration of a company's voluntary or compulsory winding-up, the court maintains a supervisory role over liquidators and provisional liquidators. The court's approval is also required for certain matters, including the appointment of provisional liquidators and liquidators. As liquidators and provisional liquidators are officers of the court, they may seek directions from the court. Parties affected by liquidators/provisional liquidators' decisions can also apply to the court for redress (e.g., application for a validation order).	Yes. Court approval is required to convene scheme meetings and sanction schemes.	No. Unless the restructuring is by way of scheme of arrangement.

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
Who manages the debtor?	In voluntary liquidations, the board of directors should cease management after the shareholders' resolution for voluntary liquidation and upon the appointment of liquidators. Unless provisional liquidators have been appointed, the management remains in control during a compulsory liquidation application until the winding-up order is granted. Once appointed, the provisional liquidators/liquidators manage the debtor.	Persons in control before the procedure is initiated (the directors, receivers or liquidators (if the company is undergoing a winding-up procedure)) retain control. Where the company is undergoing parallel schemes of arrangement in Hong Kong and an offshore jurisdiction, provisional liquidators (or soft-touch provisional liquidators (for restructuring purposes)) may be appointed in the offshore jurisdiction and may seek recognition in Hong Kong to take full or partial control of assets and affairs of the company in Hong Kong. In soft-touch provisional liquidation (contrary to provisional liquidation), the debtor company's management can continue to manage the debtor.	The company's management retains control during the reorganization, workout or restructuring. Once a workout is agreed, the company will operate under the terms of its arrangement.
What is the 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, in one Chinese language and in 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, in one Chinese language and in one English language newspaper. The grant of winding-up order and subsequent notices of the meetings of creditors and contributories (shareholders) will also be advertised. The contributories and creditors can also obtain a copy of the full statement of the company's affairs from the liquidators prior to these meetings.	After the court orders a meeting of creditors/members (as applicable) to vote on the scheme, a notice of the meeting must be advertised and sent with an explanatory statement to the relevant creditors/members, in accordance to the court order. The explanatory statement explains the effect of the scheme. The court will consider the adequacy of the disclosure made to voting creditors when deciding whether to sanction a scheme of arrangement. The outcome of the sanction will also be advertised in accordance to the court order granted at the sanction hearing.	This would depend on the terms of the arrangement.
What entities are excluded from customary insolvency or reorganization proceedings, and what legislation applies to them?	**Personal insolvency** See COMI considerations under the answer to "**Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?**" under the section "**Bankruptcy.**" **Corporate insolvency** See COMI considerations under the answer to "**Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?**" under the section "**Bankruptcy.**"	N/A See answer COMI considerations under the answer to "**Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this country?**" under the section "**Scheme of arrangement.**" A company needs to show it has a "sufficient connection" with Hong Kong.	N/A

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
	Companies incorporated in Hong Kong or incorporated elsewhere but registered under the Companies (Winding-Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("**CWUMPO**"), or under the Companies Ordinance (Cap. 32) as previously in force, may be wound up voluntarily or by compulsory liquidation in Hong Kong. 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 (Cap. 155) and Insurance Companies Ordinance (Cap. 41) for the winding-up of authorized and insurance institutions in Hong Kong, respectively. Certain partnerships fall within the definition of "unregistered companies" and may be wound up as an "unregistered company" with statutory modifications.		
How long does it generally take for a creditor to commence the procedure?	This depends on the circumstances.	This depends on the circumstances.	This depends on the circumstances.
Effect of process			
Does the debtor remain in possession with continuation of incumbent management control?	**Personal insolvency** Save for reasonable amounts for living expenses, management of a bankrupt debtor's assets vests with the trustees in bankruptcy. **Corporate insolvency** Where provisional liquidators are appointed prior to the liquidation, upon the appointment of the provisional liquidator, the managerial and operational powers of the directors in the company will pass to the provisional liquidator. The directors may retain a limited residual power (for example, to resist the winding-up petition) but it is not of a managerial nature. Decisions regarding the company's operation are vested in the provisional liquidator from the time of their appointment, and the directors' powers are suspended at that time. See also the answer to "Who manages the debtor?" under the section "Bankruptcy."	Yes. But see the answer to "**Who manages the debtor?**" under the section "**Scheme of arrangement**" and "**What is the nature of the insolvency process?**" under the section "Reorganizations, restructurings and workouts" on offshore soft-touch provisional liquidators in the restructuring process.	Yes. But see the answer to "**Who manages the debtor?**" under the section "**Scheme of arrangement**" and "**What is the nature of the insolvency process?**" under the section "Reorganizations, restructurings and workouts" on offshore soft-touch provisional liquidators in the restructuring process.

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	**Corporate insolvency** There is no moratorium for voluntary liquidations pending shareholder resolution; however, the court has the 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 proceedings before a winding-up order is made. Leave must be obtained before any action or enforcement is commenced against a company in voluntary liquidation (i.e., after shareholder's resolution has been passed) and compulsory liquidation after the winding-up order has been granted. There will be a stay of legal proceedings on the appointment of provisional liquidators, whereby parties will need to obtain leave before commencing action or enforcement against the company. Any stay is limited to Hong Kong. In appropriate circumstances, non-Hong Kong companies (i.e., foreign-incorporated companies that are registered and/or have a place of business in Hong Kong) may seek to apply for provisional liquidation in their place of incorporation or recognition in another jurisdiction to obtain the benefit of a stay in another jurisdiction as well.	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. In the past, applicant parties have sought to include in the orders to convene scheme meetings orders stating that parties must seek leave to commence proceedings against a debtor company, pending sanction of the scheme. See also the answer to "**What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?**" under the section "**Bankruptcy**" where provisional liquidators are appointed pending a scheme of arrangement.	There is no moratorium. Creditors can initiate winding-up proceedings at any time. But see answer to "**Who manages the debtor?**" under the section "**Scheme of arrangement**" and "**What is the nature of the insolvency process?**" under the section "**Reorganizations, restructurings and workouts**" on offshore soft-touch provisional liquidators in the restructuring process.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	A debtor in liquidation can obtain additional finance, although this will be rare in practice. 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 preexisting security interests without the preexisting 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.

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
Are the proceedings recognized abroad?	This would depend on where recognition is sought. Liquidators/provisional liquidators have been able to seek recognition in common law jurisdictions in reliance on case law precedents. There have been a few prior cases of ad hoc recognition of liquidators/bankruptcy administrators from the People's Republic of China (PRC) in Hong Kong Courts since 2020. However, there has been a major development in PRC and Hong Kong mutual recognition of insolvency proceedings in 2021. On 14 May 2021, the Supreme Court of the People's Republic of China (SPC) and the Secretary for Justice of Hong Kong signed a record of meeting concerning the mutual recognition of and assistance to insolvency proceedings between the courts of the Mainland (i.e., the PRC) and the Hong Kong Special Administrative Region ("**Insolvency Mutual Recognition Framework**"). Under the Insolvency Mutual Recognition Framework, Hong Kong liquidators (including compulsory liquidations and creditors' voluntary liquidations) and provisional liquidators have, for the first time, an institutional/statutory basis to seek recognition and assistance from the PRC courts in the pilot areas of Shanghai, Shenzhen and Xiamen. In July 2021, the Hong Kong Courts granted the first letter of request to a PRC court in a pilot area (Shenzhen) to recognize Hong Kong-appointed liquidators. In October 2021, the Hong Kong Courts recognized the first test case under the Insolvency Mutual Recognition Framework. Notably, PRC administrators appointed by the Hainan Province Courts were granted recognition in Hong Kong, notwithstanding that Hainan Province is outside of the designated pilot areas.	This would depend on where recognition is sought. In the past, it was customary for a debtor company that is incorporated overseas or has debts governed by foreign laws to have parallel schemes of arrangement, e.g., at the place of incorporation for non-Hong Kong companies (i.e., foreign-incorporated companies that are registered in Hong Kong), or other places where there is a real risk of adverse enforcement. Many of the Hong Kong Stock Exchange listed companies are non-Hong Kong companies. There have been a few cases in 2019 to 2021 where the Hong Kong Court has been critical of the necessity for costly parallel schemes, where the debts, assets and creditors of the companies in question were primarily in Hong Kong. In such instances, the Hong Kong Court (and offshore jurisdictions, e.g., Cayman Islands) has called for greater cross-border coordination, for instance, by way of recognition. See also the answer to "**Are the proceedings recognized abroad?**" under the section "**Bankruptcy**," discussing the "**Insolvency Mutual Recognition Framework**" that may apply to a scheme of arrangement commenced by liquidators.	N/A
Has the UNCITRAL Model Law been adopted?	No	No	No

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
Can a debtor continue to carry on business during insolvency proceedings?	**Personal insolvency** The assets of the bankrupt debtor are vested in the trustee in bankruptcy, including any business which they trade as a sole proprietor. **Members' voluntary liquidation and creditors' voluntary liquidation** The company should cease business operations. Provisional liquidators/liquidators can only continue the company's 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 The company can continue its business during the application for a scheme of arrangement.	N/A The company can continue its business during its reorganization, restructuring and workout period.
Other factors			
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	There are currently none. However, under the proposed statutory corporate rescue procedure ("**CRP**"), which was to be introduced in the first half of the 2020-2021 legislative year ("**CRP Bill**"), the government intended to introduce insolvent trading provisions. In the proposals, 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 became 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). The CRP Bill lapsed at the end of the term of office of the Legislative Council in 2021, after delays during COVID-19.. It remains to be seen whether the CRP Bill will be reintroduced in the next legislative session.	There are currently none. However, under the proposed statutory corporate rescue procedure ("**CRP**"), which was to be introduced in the first half of the 2020-2021 legislative year ("**CRP Bill**"), the government intended to introduce insolvent trading provisions. In the proposals, 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 became 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). The CRP Bill lapsed at the end of the term of office of the Legislative Council in 2021, after delays during COVID-19. It remains to be seen whether the CRP Bill will be reintroduced in the next legislative session.	There are currently none. However, under the proposed statutory corporate rescue procedure ("**CRP**"), which was to be introduced in the first half of the 2020-2021 legislative year ("**CRP Bill**"), the government intended to introduce insolvent trading provisions. In the proposals, 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 became 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). The CRP Bill lapsed at the end of the term of office of the Legislative Council in 2021, after delays during COVID-19. It remains to be seen whether the CRP Bill will be reintroduced in the next legislative session.

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
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, briefly summarized 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 sharing pari passu (including any shortfall arising from secured creditors after realization of their security) ■ Shareholders, as dividends, if there is a surplus Secured creditors stand outside of the above priority of payments as they are entitled to look to the proceeds of their security.	N/A The debtor company has freedom to elect which claims are restructured and the proposed terms of payment, including order, under the scheme of arrangement. However, the court has discretion to grant or refuse the scheme considering various factors, including "fairness" to creditors.	N/A The debtor company has freedom to elect which claims are restructured and negotiate the proposed terms and order of payment under its reorganization, restructuring and workout.
Do pension liabilities have any priority over other unsecured claims?	There are two types of pension schemes in Hong Kong: Mandatory Provident Fund Schemes and Occupational Retirement Schemes , commonly known as MPF and ORSO Schemes, respectively. Yes, under section 265 of the Companies Winding-Up and Miscellaneous Provisions Ordinance (Cap. 32) (CWUMPO), there is a statutory waterfall of payments that rank in priority before unsecured claims. These payments include, among other items, certain payments to employees including contributions under the Occupational Retirement Schemes Ordinance (Cap. 426) or under the Mandatory Provident Fund Schemes Ordinance (Cap. 485). See also the answer to "**What is the order of priority of claims?**" under the section "**Bankruptcy**" for more information on the waterfall.	There are two types of pension schemes in Hong Kong: Mandatory Provident Fund Schemes and Occupational Retirement Schemes, commonly known as MPF and ORSO Schemes, respectively. In most cases and depending on the terms of the scheme, 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 , commonly known as MPF and ORSO Schemes, respectively. In most cases and depending on the terms of the reorganization, restructuring and workout, neither would be affected by reorganizations, restructurings and workouts.

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
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, for example, 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 it 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. ■ 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. (See answer to “Are there any wrongful or insolvent trading restrictions and what is the directors’ liability?” under the section “Bankruptcy.”)	N/A Avoidance powers are only available to liquidators (i.e., on a winding-up).	N/A Avoidance powers are only available to liquidators (i.e., on a winding-up).

	Bankruptcy	Scheme of arrangement	Reorganizations, restructurings and workouts
	There is only fraudulent trading, which has a higher threshold. Where a company has entered into unprofitable contracts, 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.		

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Indonesia

	Bankruptcy	Company reorganization process
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	Generally, movable or immovable assets can be secured in Indonesia. The common forms of asset security in Indonesia are mortgage (hak tanggungan), pledge (including pledge over shares) and fiduciary security. In Indonesia, accounts receivable (AR) are commonly secured through a fiducia security.	
What is the nature of the insolvency process?	There are bankruptcy and suspension of debt payment obligations (PKPU) processes in Indonesia, as regulated under Law No. 37 of 2004 dated 18 October 2004 on Bankruptcy and Suspension of Debt Payment Obligations ("Bankruptcy Law"). The Bankruptcy Law does not apply an insolvency test to commence the bankruptcy process and declare a debtor bankrupt. A bankruptcy petition can be filed by the debtor itself (in the case of voluntary bankruptcy) or any of its creditors, whether domestic or foreign. The requirement for bankruptcy is that the debtor has more than one creditor and has failed to pay in full one of its debts that is already due and payable. Once the petition is granted, the process will be overseen by the Commercial Court to ensure the orderly liquidation of the debtor's assets. 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 on a composition plan.	A petition for PKPU can be filed by: (i) a debtor if it is unable or predicts that it would be unable to pay its debts when they become due and payable; or (ii) a creditor that foresees that its debtor would not be able to continue to pay its debts, when they become due and payable, to the relevant commercial court. Similarly, no insolvency test applies here. The aim of PKPU 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, PKPU provides 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 PKPU proceeding can be converted into a bankruptcy proceeding when it is clear that the suspension will not be successful.
What is the solvency requirement for a company to file a case in this jurisdiction?	There is no solvency test for a debtor to be declared bankrupt in Indonesia.	There is no solvency test for a debtor to be declared bankrupt in Indonesia.

	Bankruptcy	Company reorganization process
Is there a requirement to demonstrate centre of main interests (COMI) for a company to file a case in this jurisdiction?	Indonesia does not have the concept of COMI. In general, as long as the debtor is domiciled in Indonesia, the court has jurisdiction to adjudicate the bankruptcy petition. If the debtor is a legal entity, the Commercial Court that may hear the case is the court having jurisdiction over the legal domicile of the debtor, which is stated in its Articles of Association. If the debtor is not domiciled in the territory of Indonesia, the petition must be filed with the Commercial Court having jurisdiction over the legal domicile of the debtor's office where it carries out its business in Indonesia.	
Is restructuring of both secured and unsecured claims possible?	Yes, it is based on the approval of the creditors.	Yes, it is based on the approval of the creditors.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	Creditors are generally classified as either secured or unsecured. There is no specific treatment for shareholders' claims under the Bankruptcy Law.	
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	If the debtor is a company, shareholder approval is required to submit a petition for (voluntary) bankruptcy. Shareholders are only entitled to vote on the composition plan if the shareholders are legally admitted creditors.	
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes. As a general rule, all creditors are bound by the bankruptcy process and decision.	Yes. If the composition plan submitted in the PKPU is approved, it would be binding on all creditors. Dissenting secured creditors, however, have the option not to be bound by the composition plan if they vote against the plan. The dissenting secured creditors will then be compensated with the lesser of the value of the collateral or the actual value of their debt directly secured by the collateral rights.
Commencing the process		
Who can commence?	Under the Bankruptcy Law, the following can file a petition of bankruptcy (subject to the fulfillment of bankruptcy requirements): ■ The debtor itself (in the case of voluntary bankruptcy) ■ Any of its creditors, whether domestic or foreign ■ Otoritas Jasa Keuangan or OJK (the Financial Services Authority) if the debtor is a bank, securities company, a stock exchange, a clearing and guarantee agency, or a depositary and settlement agency, an insurance company, a reinsurance company, a pension fund or a state-owned company (in the form of a persero) ■ The public prosecutor (if the bankruptcy petition involves public interest)	Under the Bankruptcy Law, the following can file a petition of PKPU (subject to the fulfillment of PKPU requirements): ■ The debtor itself (in the case of voluntary PKPU) ■ Any of its unsecured creditors, whether domestic or foreign ■ Otoritas Jasa Keuangan or OJK (the Financial Services Authority) if the debtor is a bank, securities company, a stock exchange, a clearing and guarantee agency, or a depositary and settlement agency, an insurance company, a reinsurance company, a pension fund or a state-owned company (in the form of a persero) ■ The public prosecutor (if the PKPU petition involves public interest) Please note that a debtor may also file a petition for PKPU after a petition for bankruptcy declaration has been filed against it.
Is shareholder's consent required to commence proceeding?	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 PKPU.

	Bankruptcy	Company reorganization process
Is there an ability to consolidate group estates?	Technically, no. A bankruptcy process is carried out against a specific company that is a debtor. If the petitioner intends to consolidate all group estates, the petition must be filed against all debtor companies.	
Is there any court involvement?	Yes, the court will supervise the process.	
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 PKPU, 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 (as the case may be, depending on the nature of business activities).
What is level of disclosure of process to voting creditors?	The Bankruptcy Law requires the receiver to disclose/announce the bankruptcy to the public no later than five days after the decision. The announcement must be made in the State Gazette and at least two daily newspapers as determined by the supervisory judge. The information includes the name and address of the bankrupt debtor, the name of the appointed supervisory judge, the composition of the interim creditor's committee (if any), as well as the venue and time scheduled for the first creditor's meeting.	Much like the announcement requirements in a bankruptcy process, a PKPU process must also be announced in the State Gazette and at least two daily newspapers, as determined by the supervisory judge. The information includes an invitation to attend the hearing, as well as the venue and time scheduled for the creditor's meeting.
What entities are excluded from customary insolvency or reorganization proceedings, and what legislation applies to them?	The Bankruptcy Law provides a number of exceptions, as follows: ■ Only Otoritas Jasa Keuangan or OJK (the Financial Services Authority) can file a bankruptcy petition against banks, securities companies, stock exchanges, clearing and guarantee agencies, or depositary and settlement agencies, insurance companies, reinsurance companies, pension funds or state-owned companies (in the form of a persero). ■ The public prosecutor may file a bankruptcy petition against entities if it involves public interest.	
How long does it generally take for a creditor to commence the procedure?	The bankruptcy decision will be rendered within 60 days after the petition is registered. There is no statutory timeline to complete the liquidation process.	The PKPU process commences after the issuance of a temporary PKPU court order. The court must issue a temporary PKPU judgment within 20 days after its filing (in case the petition is filed by the creditor) or three days after its filing (in case the petition is filed by the debtor).
Effect of process		
Does debtor remain in possession with continuation of incumbent management control?	After a bankruptcy decision, the debtor will lose its power to manage and dispose of its assets.	In a PKPU process, the debtor may conduct its business as usual, but it is subject to approval from the administrator and supervisory judge (as the case may be, depending on the nature of business activities).
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	As a general rule, the secured creditors' right to enforce the security is stayed for a maximum of 90 days from the date the bankruptcy declaration is announced. Following the end of the stay period, the secured creditors can enforce the security subject to certain requirements (including a statutory timeline of enforcement). It is up to other jurisdictions' legislatures whether they would recognize Indonesia's bankruptcy proceeding.	Under the Bankruptcy Law, there is a stay of enforcement against the debtor during a PKPU process, during which the secured creditors are prevented from enforcing their rights over the collateral. It is up to other jurisdictions' legislatures whether they would recognize Indonesia's PKPU proceeding.

	Bankruptcy	Company reorganization process
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	There is no specific provision on this matter. The Bankruptcy Law only provides that it is still possible for the debtor to obtain financing after a bankruptcy declaration if the receivers find that it is in the best interests of the bankruptcy estate.	There is no specific provision on superpriority/priming financing. In PKPU, 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 procedure be used to implement debt-to-equity swap?	There is no specific provision/restriction on this matter.	Yes, depending on the terms of the agreed composition plan.
Are third-party releases available?	There is no specific provision/restriction on this matter.	Generally no, unless specifically agreed in the composition plan (e.g., the 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.
Can a debtor continue to carry on business during insolvency proceedings?	After a debtor is declared bankrupt, the debtor will lose its authority to manage and dispose of its assets. This includes the operation of the business. The business can be carried out by the receiver with the approval of the creditors' committee or, if none is available, with the approval of the supervisory judge.	Generally, yes. In a PKPU, the debtor may conduct its business as usual but it is subject to approval from the administrator and supervisory judge (as the case may be, depending on the nature of business activities). The debtor is given temporary relief to reorganize its debts and remain in business, and ultimately satisfy its creditors.
Other factors		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	There is no wrongful trading or insolvent trading per se, but Law No. 40 of 2007 on Limited Liability Companies ("Company Law") provides that if a company's bankruptcy is due to the fault or negligence of its directors, and the company's assets are insufficient to pay all its obligations, the directors will be liable to pay the outstanding amount subject to certain requirements.	
What is the order of priority of claims?	The ranking of claims in a debtor's bankruptcy is regulated by several pieces of legislation. As a general rule, the order of priority is as follows: ■ Preferred creditors —creditors that are eligible for tax claims, employee or worker's salary, bankruptcy estate creditors (including the receiver's fee, costs of the bankruptcy proceedings, post-bankruptcy financing, and house or office lease) ■ Secured creditors —creditors that have the benefit of a security interest over some or all of the assets of the debtor ■ Unsecured creditors –creditors that do not have collateral/security interest over the debtor's assets	N/A

	Bankruptcy	Company reorganization process
Do pension liabilities have any priority over other unsecured claims?	There are no pension liabilities in Indonesia. However, employees are entitled to other types of claims, i.e., severance payment, long service payment and other compensation of rights. As a general rule, employees' claims take priority over other unsecured claims.	There are no pension liabilities in Indonesia. However, if the PKPU results in the termination of employment, in addition to a claim for 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. As a general rule, employees' claims take priority over other unsecured claims.
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. If any actions that are not legally mandatory are carried out within one year prior to the debtor's bankruptcy declaration, the Bankruptcy Law provides that unless proven otherwise, there is a legal presumption of deemed knowledge from the debtor that these actions will prejudice the creditors. Such actions are as follows: ■ Constitute an agreement under which the debtor's obligations were more onerous than the counterparty's obligations ■ Constitute the payment of or granting of security for existing debts that were not due and payable ■ It was performed with an affiliated party (which is described extensively in the Bankruptcy Law)	

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Italy

Remark: Italy is a member of the European Union. Please refer to the European Union chapter to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. The European Restructuring Directive has not yet been implemented in Italy. In January 2021, in fact, Italy has requested the European Commission a one-year extension (i.e., until 17 July 2022) of the deadline to implement the Directive.

	Bankruptcy (Fallimento)	Prebankruptcy 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 accounts receivable?	It is possible to take security over most assets, including receivables and bank accounts, whereas security on equipment requires the appointment of a custodian, which, in the context of an operating plant, is a problem as it is for the same reason with security on inventory (i.e., it would require segregation). However, non-possessory security on inventory is available under Section 46 of the Banking Law in the context of medium- or long-term bank financing. Non-possessory security interests are also theoretically available in other cases through registration in a national register, which, however, still awaits implementations after several years.			
What is the nature of the insolvency 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 prepackaged restructuring arrangement or plan is sanctioned and made binding upon all creditors An 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 comprising (1) declaration of a state of insolvency; and (2) either (a) commencement of extraordinary administration or (b) adjudication in bankruptcy This is 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.

	Bankruptcy (Fallimento)	Prebankruptcy 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 for a company to file a case in this jurisdiction?	Available for insolvent entities, i.e., those that are unable to regularly meet their financial obligations It is worth pointing out that the insolvency law reform that will enter in force in Italy in May 2022 (see below) will introduce a clear distinction between the "state of crisis" and the "state of insolvency." According to the new bankruptcy law, the "state of crisis" is the economic and financial imbalance that makes it likely that the debtor will become insolvent in the future. Such a state of crisis may particularly be reflected in the inadequacy of the cash flows necessary to regularly meet the company's future and already planned obligations. In more detail, the indicator of the imbalance situation is represented by the non-sustainability of the debts for the following six months and the absence of a prospect of business continuity for the ongoing financial year. On the other side, "insolvency" will continue to identify the state of a company that is no longer able to regularly meet its existing or current obligations.	A 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 a debtor is in a "state of crisis" but has sufficient assets to pay dissenting creditors in full. **Turnaround plan** Available where a 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 ten 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 lender claim will prioritize the existing creditors' in the case of bankruptcy (Prededucibili).	Available where a debtor is suffering short-term liquidity issues but where the financial position may be resolved through (1) the sale of its assets or undertaking or (2) through a restructuring plan.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	Yes	Yes	Yes	Yes

	Bankruptcy (Fallimento)	Prebankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements/ turnaround plans (Accordi di Ristrutturazione dei Debiti/Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
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 a 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 strictly best achievable security in general. Regarding the nature of the privilege and degree of security, a mortgage is, in theory, the best security.	No. However, unsecured creditors' claims may be restructured 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 the approval of 60% in the value of secured and unsecured creditors. Note: Claims of dissenting creditors (secured and unsecured) must be satisfied in full (except for the specific circumstances set out under Article 182-septies of the Bankruptcy Code in which the effects of the agreement may be extended to dissenting creditors – see below).	**Liquidation:** N/A **Composition:** Yes
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	**Liquidation:** N/A **In-Bankruptcy Petition:** Yes Unsecured creditors and secured creditors who 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.
Are shareholders entitled to vote on a plan?	**Liquidation:** N/A **In-Bankruptcy Composition:** No	No	No	No

	Bankruptcy (Fallimento)	Prebankruptcy 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 (i.e., cramdown)?	**Liquidation:** N/A **In-Bankruptcy Composition:** Yes Dissenting creditors are bound if required creditor approvals are obtained.	Yes. The bankruptcy court can confirm a prebankruptcy composition as long as (1) no more than 20% of creditors in a particular class dissent the debtor 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 proposal grants the payment of at least 40% of unsecured creditors (or 30% in case of a business continuity composition, in which there is a 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 who are not paid in full may challenge the prebankruptcy composition even if approved by the required majority.	**Debt restructuring arrangement:** Yes, in circumstances involving banks or financial intermediaries. Moreover, the new Article 182-septies of the Italian Bankruptcy Law (as amended by Law Decree no. 118/2021) provides that, under some circumstances, the effects of the debt restructuring arrangement can be extended to creditors that are not a party to the agreement and belong to the same class, provided that their claims in the aggregate represent no more than 25% of the claims of the creditors belonging to the same class. **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.
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

	Bankruptcy (Fallimento)	Prebankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements/ turnaround plans (Accordi di Ristrutturazione dei Debiti/Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
Is there any court involvement?	There is a limited amount of court involvement The process is supervised by the court.	There is a limited amount of court involvement The process is supervised by the court, which also confirms the prebankruptcy composition.	There is a limited amount of court involvement **Debt restructuring arrangement:** The debt restructuring arrangement must be approved by the court. **Turnaround plan:** N/A	There is a heightened amount of court involvement The process is supervised by the court and the Ministry of Economical Development.
Who manages the debtor?	The bankruptcy receiver (appointed by the bankruptcy court)	Debtor management retains its powers under the supervision of the judicial commissioner (later a judicial liquidator) appointed by the bankruptcy court.	Debtor management retains its powers.	Debtor management retains its powers in certain circumstances (e.g., when the debtor can resolve its insolvency issues through a restructuring). Where this is impossible, three extraordinary commissioners will be appointed by the bankruptcy court.
What is the 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 prebankruptcy 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 feasibility of the plan.	An Extraordinary Administration Petition to 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 the security (and the corresponding write-down of security) must be submitted.

	Bankruptcy (Fallimento)	Prebankruptcy 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 reorganization 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, 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 less, 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 less), 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 liquidation of an insolvent company?	It generally takes a few weeks/months, depending on the competent Court.	It generally takes a few weeks/months, depending on the competent Court.	It generally takes a few weeks/months, depending on the competent Court.	N/A
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 debtor and the proceedings will be managed and controlled by judicial commissioners and the court.

	Bankruptcy (Fallimento)	Prebankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements/ turnaround plans (Accordi di Ristrutturazione dei Debiti/Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	Automatic stay upon adjudication that prevents enforcement of security Creditors cannot file or continue proceedings, with the partial exception of creditors holding a pledge over movables and which can be authorized to enforce separately. Such stay would apply worldwide in respect to all debtor assets irrespective of where they are located. However, whether or not local courts would accept and enforce such stay is a different issue and should be assessed under the applicable local law.	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. Such stay would apply worldwide in respect to all assets of the debtor irrespective of where they are located. However, whether or not local courts would accept and enforce such stay is a different issue and should be assessed under the applicable local law.	**Debt restructuring arrangement:** No automatic stay, but a stay may be requested by the debtor. If requested, a stay prevents the enforcement of security. Creditors are unable to file or continue proceedings. Such stay would apply worldwide in respect to all debtor assets irrespective of where they are located. However, whether or not local courts would accept and enforce such a stay is a different issue and should be assessed under the applicable local law. **Turnaround plan:** No automatic stay	The 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. Such stay would apply worldwide in respect to all debtor assets irrespective of where they are located. However, whether or not local courts would accept and enforce such a stay is a different issue and should be assessed under the applicable local law.
Is there a provision for debtor-in-possession or rescuer financing or superpriority or priming 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% superpriority for "new money" as an "expense of the procedure" This funding is protected from the risk of a 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% superpriority for "new money" (not frequently used) **Turnaround plan:** N/A	**Liquidation:** N/A **Composition:** Yes, subject to approval from the bankruptcy court. **Priority:** 100% superpriority for "new money" (relatively frequently used)
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.

	Bankruptcy (Fallimento)	Prebankruptcy composition (Concordato Preventivo)	Debt restructuring arrangements/ turnaround plans (Accordi di Ristrutturazione dei Debiti/Piani di risanamento)	Extraordinary administration (Amministrazione Straordinaria)
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: Third-party releases will not bind creditors who do not vote in favor of the plan.	Yes, in accordance with the terms of the plan.
Are the proceedings recognized 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
Can a debtor continue to carry on business during insolvency proceedings?	Not the same management bodies, but the trustee can and this is actually the default approach now.	Yes, depending on the type of prebankruptcy 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 manager, liquidator, statutory auditors (including advisers) and/or lenders (as shadow directors) **Civil liability:** Directors' delay in requesting the debtor's admission to bankruptcy may be construed as mismanagement. **Criminal liability:** (1) Any director who delays filing a petition for bankruptcy commits the crime of "simple bankruptcy" provided that the delay has worsened the debtor's distress. This will result in a fine. (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)

	Bankruptcy (Fallimento)	Prebankruptcy 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 that are authorized by the bankruptcy court 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.
Do pension liabilities have any priority over other unsecured claims?	The debtor has no pension liabilities towards its employees - in relation to statutory and/or contractual pension entitlements but has to make mandatory contributions to the Italian Social Security Body (INPS). Employees receive their full statutory pension entitlement from the INPSItalian Social Security Body (INPS) even if the employer fails to pay mandatory social contributions. Where an employer makes payments 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, in the latter case, pension funds will return to the employee contributions that have been deducted from their payroll. The INPS and/or 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.			

	Bankruptcy (Fallimento)	Prebankruptcy 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: ■ Deeds executed by the debtor for no consideration may be set aside if created within two years prior to the declaration of bankruptcy. ■ Guarantees and security granted by the debtor in respect of preexisting debts that have not yet fallen due may be set aside if created within one year prior to the declaration of bankruptcy. ■ 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: ■ Deeds executed by the debtor for no consideration may be set aside if created within two years prior to the declaration of bankruptcy. ■ Guarantees and security granted by the debtor in respect of preexisting debts that have not yet fallen due may be set aside if created within one year prior to the declaration of bankruptcy. ■ 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: ■ Deeds executed by the debtor for no consideration may be set aside if created within two years prior to the declaration of bankruptcy. ■ Guarantees and security granted by the debtor in respect of preexisting debts that have not yet fallen due may be set aside if created within one year prior to the declaration of bankruptcy. ■ 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.

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Japan

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
Initial considerations				
Can you take security over all types of assets, including accounts receivable?	Before the commencement of the proceedings, security can be taken over any type of assets, including accounts receivable. 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 insolvency process?	■ Court-supervised proceedings liquidate an insolvent debtor and make distributions (if any) to creditors to satisfy existing debts ■ The court appoints the bankruptcy trustee and administers the case under the court's supervision. ■ Secured creditors may enforce their security interests outside of the proceedings.	■ Court-supervised proceedings 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 reorganize a debtor's business pursuant to a reorganization plan. It is available only for stock corporations. ■ The court appoints the trustee 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 and secured creditors are subject to the proceedings and may be paid only pursuant to the plan.	■ Liquidation proceedings are 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 from the 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. ■ The liquidator liquidates the debtor pursuant to an agreement approved by the creditors and confirmed by the court. ■ Secured creditors may enforce their security interests outside of the proceedings.

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
What is the solvency requirement for a company to file a case in this jurisdiction?	Available for the debtor in either of these insolvencies: ■ Balance sheet insolvency (this being the case where the debtor has a net worth deficit); or ■ 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 section, the word "bankruptcy" means balance sheet insolvency and cash flow insolvency. The debtor's external statement will rebuttably presume cash flow insolvency (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 is either of the following: ■ Is at risk of bankruptcy ■ Is unable to pay debts as they fall due without significantly impairing the debtor's business operations	Available for the debtor that is either of the following: ■ Is at risk of bankruptcy ■ Is unable to pay debts as they fall due without significantly impairing the debtor's business operations	Available in either of the following if: ■ There are circumstances that seriously hinder the implementation of the liquidation of the debtor. ■ The debtor is suspected to be in a state of balance sheet insolvency.
Is there a requirement to demonstrate COMI center of main interests (COMI) for a company to file a case in this jurisdiction?	No. However, the debtor needs to have an office or property in Japan in order to file a petition for the proceedings.	No. However, the debtor needs to have an office or property in Japan in order to file a petition for the proceedings.	No. 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.
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).
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	No			

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	No. Shareholder approval is not required to commence a case. N/A. A plan is not formulated in the bankruptcy proceedings.	No. Shareholder approval is not required to commence a case. No. Shareholders are not entitled to vote on a plan.	No. Shareholder approval is not required to commence a case. Yes. Shareholders are entitled to vote on a plan. However, if the debtor is in a state of balance sheet insolvency at the time an order commencing reorganization proceedings is issued, no shareholder has the voting right.	Special liquidation is available only for stock corporations in the ordinary liquidation proceedings. Consent of shareholders who hold two-thirds or more of the total voting rights is required (unless a higher voting requirement is provided in the debtor's articles of incorporation) to initiate the ordinary liquidation proceedings. No. Shareholders are not entitled to vote on an agreement with creditors.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	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) is applicable only where the debtor faces 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 for special liquidation if the debtor is suspected to be in a state of balance sheet insolvency.
Is shareholder's consent required to commence proceeding?	No	No	No	Consent of shareholders who hold two-thirds or more of the total voting rights (unless a higher voting requirement is provided in the debtor's articles of incorporation) is required to dissolve the debtor and initiate the ordinary liquidation proceedings, which need to 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 court's prior approval or the supervisor appointed by the court. The court reviews and confirms the rehabilitation plan if all of the requirements are satisfied.	Yes, the court supervises the process. Certain matters/conducts require the court's prior approval. The court reviews and confirms the reorganization plan if all of the requirements are satisfied.	Yes, the court supervises the process. Certain matters/conducts require the court's prior approval. The court reviews and confirms the agreement with creditors if all of the requirements are satisfied.

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
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 qualified third-party 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 special liquidator (usually a former member of the management of the debtor or a qualified lawyer) appointed by the shareholders' meeting of the debtor.
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 before the creditors' meeting to vote 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 draft agreement with creditors and relevant information is 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.	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 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 court appoints the trustee 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 the debtor's management, takes control of the debtor.

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	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 the enforcement of security interests. Generally, the effect of Japanese insolvency proceedings is worldwide. However, in order to stay legal proceedings such as litigation and compulsory execution pending in other jurisdictions, it is necessary to obtain recognition and assistance orders to that effect from the court in such jurisdictions.	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 the enforcement of security interests. Generally, the effect of Japanese insolvency proceedings is worldwide. However, in order to stay legal proceedings such as litigation and compulsory execution pending in other jurisdictions, it is necessary to obtain recognition and assistance orders to that effect from the court in such jurisdictions.	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. Generally, the effect of Japanese insolvency proceedings is worldwide. However, in order to stay legal proceedings such as litigation and compulsory execution pending in other jurisdictions, it is necessary to obtain recognition and assistance orders to that effect from the court in such jurisdictions.	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 the enforcement of security interests and prioritized claims. Generally, the effect of Japanese insolvency proceedings is worldwide. However, in order to stay legal proceedings such as litigation and compulsory execution pending in other jurisdictions, it is necessary to obtain recognition and assistance orders to that effect from the court in such jurisdictions.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	No	No. Post-petition DIP loans could be entitled to administrative expense status ("common benefit claims"), which has priority over other claims but does not prioritize different types of administrative expense claims.	No. Post-petition DIP loans could be entitled to administrative expense status ("common benefit claims"), which has priority over other claims but does not prioritize different 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 recognized abroad?	Yes, subject to the domestically adopted version of the UNCITRAL Model Law, other applicable conflicts of laws principles or treaties in other jurisdictions.			

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
Has the UNCITRAL Model Law been adopted?	Yes. The Law on Recognition of and Assistance for Foreign Insolvency Proceedings ("Recognition and Assistance Law") is largely modeled on the UNCITRAL Model Law. However, there are some differences between the Recognition and Assistance Law and the UNCITRAL Model Law, including the following: ■ Under the Recognition and Assistance Law, the recognition order is issued when the foreign court makes a decision to commence the proceedings or the foreign proceedings have an effect equivalent thereto. As such, in the case of interim proceedings or other proceedings before the commencement of foreign proceedings, a debtor needs to apply for a separate assistance procedure that has the effect of staying each existing procedure individually rather than of a comprehensive stay. ■ The Recognition and Assistance Law requires the court to issue an order to cancel recognition of foreign insolvency proceedings when the foreign insolvency proceedings are closed with a decision equivalent to an order to complete bankruptcy proceedings, an order to confirm rehabilitation plan, an order to confirm reorganization plan or an order to close special liquidation has been issued. In practice, in the case of recognition of foreign rehabilitation or reorganization proceedings, the court may cancel the recognition when the foreign court issues an order to confirm the rehabilitation plan or an order to confirm the reorganization plan.			
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 the court's permission.	Yes. A debtor can carry on business throughout the process.	The trustee can carry on the debtor's business throughout the process.	No.
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 the personal liability of the debtor's directors.			
What is the order of priority of claims?	The order of priority of claims is as follows: ■ secured claims (i.e., secured creditors can generally enforce their security outside the process) ■ administrative expense claims (zaidan saiken), which may be satisfied from the bankruptcy estate in priority to other unsecured claims ■ 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 ■ general unsecured claims ■ subordinated claims (e.g., interest that accrues post-commencement of the process)	The order of priority of claims is as follows: ■ secured claims (i.e., secured creditors can generally enforce their security outside the process) ■ administrative expense claims (kyoeki saiken), which may be satisfied in full as they fall due outside the rehabilitation plan ■ 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 ■ general unsecured claims, which may be satisfied only pursuant to the rehabilitation plan ■ subordinated claims, which may be satisfied only pursuant to the rehabilitation plan	The order of priority of claims is as follows: ■ administrative expense claims (kyoeki saiken), which may be satisfied in full as they fall due outside the reorganization plan ■ secured claims, which may be satisfied to the extent of the value of collateral only pursuant to the reorganization plan ■ 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 ■ general unsecured claims, which may be satisfied only pursuant to the reorganization plan ■ subordinated claims, which may be satisfied only pursuant to the rehabilitation plan	The order of priority of claims is as follows: ■ secured claims (i.e., secured creditors can generally enforce their security outside the process) ■ 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 ■ other unsecured claims, which are subject to a pro-rata distribution from the remaining funds pursuant to an agreement with creditors after the payments to claims 1 and 2

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
Do pension liabilities have any priority over other unsecured claims?	Pension liabilities under public pension plans are treated as the priority unsecured claims and have priority over the general unsecured claims. In contrast, pension liabilities under corporate pension plans such as DC and DB are treated as general unsecured claims.	Pension liabilities under public pension plans are treated as the priority unsecured claims and have priority over the general unsecured claims. In contrast, pension liabilities under corporate pension plans such as DC and DB are treated as general unsecured claims.	Pension liabilities under public pension plans are treated as the priority unsecured claims and have priority over the general unsecured claims. In contrast, pension liabilities under corporate pension plans such as DC and DB are treated as general unsecured claims.	Pension liabilities under public pension plans are given statutory priority, which may be satisfied in full as they fall due outside the repayment agreement. In contrast, pension liabilities under corporate pension plans such as DC and DB are treated as unsecured claims subject to a pro-rata distribution in accordance with the repayment agreement.
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)	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)	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)	Avoidance actions are not available in the special liquidation. However, similar mechanisms exist under the Civil Code for a creditor to seek cancellation of certain transactions that are detrimental to the creditors.

	Bankruptcy	Civil rehabilitation	Corporate reorganization	Special liquidation
	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	**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	**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	

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Kazakhstan

	Bankruptcy	Rehabilitation	Restructuring
Initial considerations			
Can you take security over all types of assets, including accounts receivable?	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, pledges of securities and pledges of rights. Assignments by way of security are not specifically recognized by Kazakhstani law and are rarely used.		
What is the nature of the insolvency 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.
What is the solvency requirement for a company to file a case in this country?	A creditor can initiate bankruptcy proceedings against a company if the company fails to pay its debt to the creditor, which has either (a) been confirmed by a court judgment or (b) admitted by the company. A debtor can apply to the court for 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 a court for commencement of restructuring proceedings if it fails 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 center of main interests (COMI) for a company to file a case in this country?	No. Only companies registered in Kazakhstan may be subject to bankruptcy proceedings under Kazakhstan's bankruptcy laws.		

	Bankruptcy	Rehabilitation	Restructuring
Is restructuring of both secured and unsecured claims possible?	There is no restructuring. The procedure aims to liquidate the debtor's assets and distribute the proceeds to the creditors in accordance with their respective priority rights.	Yes.	Yes.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	Generally, no. However, shareholders and other affiliates of the debtor are not allowed to vote at the creditors' meetings.	Generally, no. However, shareholders and other affiliates of the debtor are not allowed to vote at the creditors' meetings.	No.
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	In most cases, shareholder approval is required to commence a case. However, the debtor's CEO must commence a case (even without shareholder approval) where the shareholders took a decision to liquidate the debtor, but the debtor's assets are insufficient to repay the debts of all of its creditors. Shareholders and other affiliates of the debtor are not allowed to vote at the creditors' meetings.	In most cases, shareholder approval is required to commence a case. However, the debtor's CEO must commence a case (even without shareholder approval) where the shareholders took a decision to liquidate the debtor, but the debtor's assets are insufficient to repay the debts of all of its creditors. 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 (i.e., cramdown)?	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. All creditors of the insolvent company must sign the restructuring agreement.
Commencing the process			
Who can commence?	The debtor, one or more creditors or the public prosecutor	The debtor or one or more creditors	The debtor
Is shareholder's 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 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	Manager appointed by the meeting of creditors (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.

	Bankruptcy	Rehabilitation	Restructuring
What is the level of disclosure of process to voting creditors?	Creditors will be notified of any creditor meeting no earlier than ten days prior to the meeting.	Creditors will be notified of any creditor meeting no earlier than ten days prior to the meeting.	N/A
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 and 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 any 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 debtor commences the procedure.
Effect of process			
Does the 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)? Is the stay or moratorium worldwide?	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. The law does not expressly state that the moratorium is worldwide, but this can be inferred from the law.	Creditors are not allowed to file bankruptcy petitions against the debtor during the restructuring proceedings.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	No.	No.	N/A
Can procedure be used to implement debt-to-equity swap?	No.	No.	N/A
Are third-party releases available?	No.	No.	N/A

	Bankruptcy	Rehabilitation	Restructuring
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 deals 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		
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" or if they failed to commence bankruptcy proceedings where required.		
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. The 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

	Bankruptcy	Rehabilitation	Restructuring
Do pension liabilities have any priority over other unsecured claims?	No. In Kazakhstan, companies do not have any pension liabilities to their employees. Each company makes monthly contributions to the state pension fund, which will be responsible for paying pensions to the retired employees.	No. In Kazakhstan, companies do not have any pension liabilities to their employees. Each company makes monthly contributions to the state pension fund, which will be responsible for paying pensions to the retired employees.	N/A
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 of 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 its constituent documents or Kazakhstani law restricts such capacity, 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 has 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

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Luxembourg

Remark: Luxembourg is a member of the European Union. Please refer to the European Union chapter to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. The EU Restructuring Directive is still to be implemented in Luxembourg.

	Corporate voluntary arrangement (CVA)	Judicial management (JM)
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	Security can generally be taken over all assets, including receivables and account receivables. Security taken after the opening of a procedure of judicial reorganization will have no effect during such a procedure.	Security can be taken up to the day preceding the bankruptcy judgment, but security taken in the prebankruptcy hardening period (if any) may be subject to challenges. See below for more information on the prebankruptcy hardening period.
What is the nature of the process?	A prebankruptcy moratorium with a view toward (1) safeguarding the continuity of part or all of the assets or activities of the enterprise or (2) reorganizing the activity. In principle, the debtor remains in possession and should not be in a state of suspension of payments.	A court process with a view to liquidating the debtor's assets and to distribute any proceeds to its creditors. If the court considers that the two bankruptcy criteria are met (see below information), it will declare the company bankrupt and open a bankruptcy procedure. The court will render a judgment, notably specifying (i) the hardening period, (ii) the appointment of the supervising judge and of the trustee in bankruptcy and (iii) the deadline date for the introduction of claims by the creditors. The bankruptcy trustee has control over the management and liquidation of the bankruptcy estate. Creditors, directors and shareholders have in principle no control over the trustee's appointment and its management of the liquidation of the bankruptcy estate.
What is the solvency requirement for a company to file a case in this jurisdiction?	The procedure will be opened if (1) the debtor is in a credit crisis and suffers from a lack of creditworthiness or (2) 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. This procedure is intended to allow the debtor to meet its liabilities and requires that the debtor's situation indicates that there is a possibility of recovery. Alternatively, a plan can be established to liquidate the debtor's assets.	Bankruptcy proceedings may be launched against commercial companies whose main interest is in Luxembourg. A commercial entity may be declared bankrupt by the court when the following two criteria are met: ■ When the company ceases payments and is unable to meet its commitments (cessation des paiements), that is, the company cannot, or does not, fully pay its due, certain and liquid debts as they fall due ■ When the company loses its creditworthiness (ébranlement de crédit), the company is unable to obtain credit from any source

	Corporate voluntary arrangement (CVA)	Judicial management (JM)
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	Yes There is a rebuttable presumption that the COMI corresponds to the registered office of the Luxembourg company. Such presumption may however be challenged by other parties or Luxembourg courts in case certain factual elements demonstrate that the actual COMI is not located in Luxembourg. Such elements include, notably (without limitation), the location of its headquarters, the residence of the managers, the location of its main assets, etc.	Yes There is a rebuttable presumption that the COMI corresponds to the registered office of the Luxembourg company. Such presumption may, however, be challenged by other parties or Luxembourg courts in case certain factual elements demonstrate that the actual COMI is not located in Luxembourg. Such elements include, notably (without limitation), the location of its headquarters, the residence of the managers, the location of its main assets, etc.
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). However, the above protection is limited to the secured amount of the security, the going concern realization value of the secured assets or the book value of secured receivables. The rights of secured and unsecured creditors cannot be enforced after the appointment of the judge by the court. If the reorganization plan is approved, the restructuring is enforceable against all creditors: secured and unsecured.	There is no restructuring. The procedure aims to liquidate and recover the debtor's assets and distribute the proceeds to the creditors in accordance with their respective priority rights.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	No All creditors affected by the reorganization can vote as one class.	The order of priority payments during a bankruptcy proceeding (faillite) is as follows: **Creditors of the bankruptcy.** These are bankruptcy expenses (the bankruptcy receiver's fees and/or procedure costs) and have a preferential status over all other claims. **Preferred creditors of the bankrupt estate.** Preferred creditors include: ■ Preferred creditors by law (créanciers privilégiés), such as employees in respect of certain debts owed to them and tax authorities ■ Creditors with a nonbankruptcy proof contractual or judicial security (créanciers ayant une sûreté conventionnelle ou judiciaire), ranking behind preferred creditors by law **Ordinary unsecured creditors (créanciers chirographaires).** These are paid pro rata out of the remaining assets, if any. Shareholders are treated as subordinated creditors unless they have other contractual arrangements in place as creditors (Luxembourg law does not recognize the concept of equitable subordination) and receive any surplus from the liquidation (boni de liquidation), if any, in proportion to their shareholding. It should be noted that "bankruptcy proof" secured creditors (such as creditors benefiting from security interests under the Luxembourg Act on Financial Collateral Arrangements of 2005 ("**Financial Collateral Law**") and mortgagees) are outside the bankruptcy process (hors masse), meaning that they are not, in principle, subject to ordinary distribution and priority rules. These creditors can enforce their security and do not have to wait for the distribution of the assets by the bankruptcy receiver.

	Corporate voluntary arrangement (CVA)	Judicial management (JM)
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	In principle, no, but it will depend on the company's articles of association and any agreements on decisions to be subject to the shareholder approval. If a shareholder is also a creditor affected by the reorganization plan, they will vote together with the other creditors.	No From the date of the bankruptcy judgment up to the date of the closing of the bankruptcy proceedings, the bankrupt company and its directors are divested from the administration and disposal of the company's assets, which are entrusted to the trustee. Neither the creditors nor shareholders of the bankrupt company have any influence on the process.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes, the plan must be approved by a majority of creditors (in number), representing at least half the debtor's liabilities (in value). Once the reorganization plan has been approved by a majority of the debtor's creditors and ratified by the court, it shall be binding on all creditors, including dissenting creditors and secured creditors (with the exception of collateral holders under the Collateral Law).	In the context of a composition with creditors, the proposal is binding on dissenting creditors once ratified by the court. Secured creditors that voted in favor of the proposal are deemed to have waived their security rights. Proposals of composition after bankruptcy proceedings have started are, however, exceptional.
Commencing the process		
Who can commence?	The debtor must file a motivated application with the district court (Tribunal d'arrondissement) where its registered office (for companies) is located. The application must be set out all the grounds justifying the request, accompanied with evidencing documents and a list of the creditors. This procedure cannot be initiated by the creditor(s).	The district court sitting in commercial matters is competent to adjudicate a company bankrupt, either: ■ On the declaration made by the directors/managers on behalf of the company (within one month as of the moment when the two criteria are met) (see above) ■ At the request of a creditor ■ On the court's own motion
Is shareholder's consent required to commence proceeding?	In principle, no, but as mentioned above, it will also depend on the articles of association of the company. If the debtor is a company, the application must be filed by the board or any single representative, if any.	No From the date of the bankruptcy judgment up to the date of the closing of the bankruptcy proceedings, the bankrupt company and its directors are divested from the administration and disposal of the assets of the company, which are entrusted with the trustee. Neither the creditors nor shareholders of the bankrupt company have any influence on the process.
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 Luxembourg. (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 ("E**UIR**"))	Idem.
Is there any court involvement?	Yes The court can reject the motion to proceed with controlled management. It opens and supervises the process and has to approve the plan.	Yes. In the judgment, the court also appoints a supervising judge to oversee the bankruptcy proceedings.

	Corporate voluntary arrangement (CVA)	Judicial management (JM)
Who manages the debtor?	In principle, the debtor remains in possession. However, the debtor's management is placed under the control of one or more commissioners appointed by the court.	After the opening of the bankruptcy proceedings, the debtor's management is removed from the administration of the debtor's assets. The bankruptcy is managed by a bankruptcy trustee who is appointed by the court and acts under the supervision of a supervising judge.
What is the level of disclosure of 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.	Under bankruptcy proceedings, the District Court, sitting in commercial matters, upon deciding to open bankruptcy proceedings, will invite the debtor's creditors to file their claims within a certain period (which, in principle, shall not exceed 20 days after the date of the decision), and will schedule the dates of future hearings relating to creditors' claims. Extracts of the decision will be published in the newspapers designated thereinwithin three days from the date of the decision. The publication date is the beginning of the legal time line for creditors to challenge the decision. With respect to creditors located or residing outside Luxembourg, the insolvency judge may extend the deadline for filing claims with respect to such creditors. In any case, following any filing of a claim and prior to the hearing relating to such claim, the insolvency judge will be entitled to summon the relevant creditor to appear before the court and provide further information. The court's decision shall then determine the claims eligible for distributions in the bankruptcy proceedings.
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 under the collective debt administration. Specific insolvency rules in certain sectors apply, such as credit institutions, certain types of investment firms and financial institutions, and certain investment firms. Special insolvency rules also apply to insurance and reinsurance undertakings and pension funds, certain other entities in the financial sector managing third-party funds, investment funds, venture capital investment companies and securitization vehicles.	Public law entities are excluded. Consumers are subject to a specific insolvency procedure under the collective debt administration. Specific insolvency rules in certain sectors apply, such as credit institutions, certain types of investment firms and financial, and certain investment firms. Special insolvency rules also apply to insurance and reinsurance undertakings and pension funds. Certain other entities in the financial sector manage third-party funds, investment funds, venture capital investment companies and securitization vehicles.
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. There is no typical time frame for a controlled management procedure under Luxembourg law. Therefore, the proceedings' duration will depend on the complexity of the debtor's situation and the timetable set by the court.	The procedure is rather quick. The creditor serves a writ of summons upon the debtor to appear before the District Court, sitting in commercial matters. Following the hearing allowing the debate between parties, the court will set a date on which the judgment will be rendered. The whole process may take between one to two months

	Corporate voluntary arrangement (CVA)	Judicial management (JM)
Effect of process		
Does debtor remain in possession with continuation of incumbent management control?	Yes, in principle. However, the debtor cannot dispose of its assets without the written approval of the court.	No. A court-appointed bankruptcy trustee assumes the management and liquidation of the bankruptcy estate under the supervision of the court.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	The debtor benefits from a moratorium between the court's opening of the procedure and the ratification of the reorganization plan. Subject to limited exceptions, creditors may not take any enforcement action	Once insolvency or bankruptcy proceedings are opened, a stay is imposed on creditors from individually enforcing their rights against the bankrupt company. However, secured creditors, such as mortgagees or beneficiaries of a security under the Financial Collateral Law, can continue to enforce their rights under the mortgage or security despite the opening of bankruptcy proceedings, as their rights are not affected by the opening of bankruptcy proceedings.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	Yes. New creditors are not subject to the moratorium. If there is a close connection between the termination of the judicial reorganization and subsequent bankruptcy, new creditors will enjoy a super-priority in the subsequent bankruptcy.	Yes
Can procedure be used to implement debt-to-equity swap?	Yes	N/A
Are third-party releases available?	In principle, third parties, such as co-debtors, guarantors or security providers, do not benefit from the procedure.	Guarantees granted under the Collateral Law are enforceable notwithstanding the company's bankruptcy
Are the proceedings recognized abroad?	Yes. In the EU in accordance with the provisions of the EU Regulation on Insolvency Proceedings 2015 (848/2015) (EUIR).	Yes
Has the UNCITRAL Model Law been adopted?	No	The UNCITRAL Model Law on Cross-Border Insolvency has not been implemented in Luxembourg.
Can a debtor continue to carry on business during insolvency proceedings?	Yes	The bankruptcy court may authorize the bankruptcy trustee to continue the business.

	Corporate voluntary arrangement (CVA)	Judicial management (JM)
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 should 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, in principle, offer a payment 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, the 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 essential.
Do pension liabilities have any priority over other unsecured claims?	Company pension schemes are supervised by the Inspection Générale de la Sécurité Sociale (IGSS). Due to the fact that company pension schemes may be externalized to a pension provider (be it a group insurer or pension fund), a potential judicial reorganization of an employer would not affect the pension provisions. Company internal pension schemes are not affected by a gestion contrôlée.	Company pension schemes are supervised by the Inspection Générale de la Sécurité Sociale (IGSS). Due to the fact that company pension schemes may 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. Similarly, company internal pension schemes do not fall within the scope of insolvency.
Is it possible to challenge prior transactions?	There is no specific mechanism to challenge transactions that occurred prior to the judicial reorganization. The general principles of law in relation to fraudulent acts will apply.	In a bankruptcy judgment, the court will determine the period when the cessation of payments has occurred ("Hardening Period"). The Hardening Period shall not date back more than six months from the date on which the court formally adjudicated a company bankrupt. Certain payments made, as well as other transactions concluded or performed during the Hardening Period are subject to cancellation by the Court. Specifically: ■ During the Hardening Period and an additional period of 10 days preceding such hardening period fixed by the court, specified transactions (e.g., the granting of a security interest for antecedent debts; the payment of debts that have not fallen due, whether such payment is made in cash or by way of assignment, sale, set-off or by any other means; the payment of debts that have fallen due by any other means than in cash or by bill of exchange; the sale of assets without consideration or for materially inadequate consideration) must be set aside or declared null and void, as the case may be, if so requested by the trustee(s). ■ Payments made for debts that are due as well as other transactions concluded for consideration during the hardening period and before the decision of the court (jugement déclaratif) are subject to cancellation by the court upon proceedings instituted by the trustees if they were concluded by a relevant counterparty with the knowledge of the bankrupt company's cessation of payments. ■ Any conventional or judicial mortgage and any rights of antichresis or pledge constituted on the debtor's assets for debts previously contracted. ■ Regardless of the hardening period, the provisions of the Luxembourg Code of Commerce and those of the Luxembourg Civil Code (actio pauliana) give the trustee(s) the possibility to challenge any fraudulent payments and transactions made prior to the bankruptcy without limitation of time.

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Malaysia

	Corporate voluntary arrangement (CVA)	Judicial management (JM)	Scheme of arrangement (SoA)	Winding-up
Initial considerations				
Can you take security over all types of assets, including accounts receivable?	Yes. Creditors may take security over all types of assets, including cash or account receivable(s), either via a floating charge or a fixed charge and assignment over cash deposit in a bank account.	Same as CVA	Same as CVA	Same as CVA
What is the nature of the insolvency 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 company's affairs 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.	An SoA is a court-approved compromise or arrangement made between the company and its creditors. 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: ■ Voluntary winding-up ■ 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.

	Corporate voluntary arrangement (CVA)	Judicial management (JM)	Scheme of arrangement (SoA)	Winding-up
What is the solvency requirement for a company to file a case in this jurisdiction?	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: ■ The survival of the company, or the whole or part of its undertaking as a going concern ■ The approval of a compromise or arrangement between the company and any such persons involved ■ A more practical realization of the company's assets would be affected than a winding-up.	Same as 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: ■ The directors have made an inquiry into the company's affairs. ■ At the directors' meeting, 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. The company's directors make a statutory declaration that the company cannot continue its business because of its liabilities.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	N/A	N/A	N/A	N/A
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.	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 its assets and distribute the proceeds accordingly.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	No	No	Yes. It is the applicant's responsibility 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 scheme's viability and prepares a report on whether the proposed scheme has correctly classified the creditors, among others.	Yes. The Companies Act 2016 provides for different rights and duties of secured and unsecured creditors in the winding-up process.

	Corporate voluntary arrangement (CVA)	Judicial management (JM)	Scheme of arrangement (SoA)	Winding-up
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	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.	Yes, shareholder approval is only required where the company, I propose the SoA. 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: ■ 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. ■ A special resolution (approved by 75%) where the company chooses to wind up voluntarily This is not required in a compulsory winding-up.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Once the required majority approves the proposed CVA at the creditors and members meeting, it shall take effect and be binding on all company creditors, whether or not the creditors voted in favor of the proposal.	Once the judicial manager's proposal is approved, it shall be binding on all company creditors, whether or not the creditors voted in favor of the proposal.	Once the court has given its sanction, the scheme shall be binding on all creditors or class of creditors. This order will only have an effect upon lodgement 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.
Commencing the process				
Who can commence?	The company's directors, 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	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 shareholder's consent required to commence proceeding?	Yes	Yes, only where the company applies to commence proceedings. Where creditors apply to commence proceedings, shareholders' consent is not required.	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	N/A	N/A

	Corporate voluntary arrangement (CVA)	Judicial management (JM)	Scheme of arrangement (SoA)	Winding-up
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 of 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.	The entire process requires court involvement. Initiating an SoA requires the applicant to seek an order from the court to convene meetings of the members and various classes of company creditors. 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 the petitioner has nominated no liquidator, the court shall appoint an approved liquidator or official receiver as the liquidator as it deems fit. Upon the liquidator's application, the court may order the liquidator to be released and that the company be dissolved.
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.	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 process to voting creditors?	Disclosure of the CVA process and the company's affairs is required as the CVA is subject to the creditors' approval.	Disclosure of the JM process and ultimate proposal to creditors is required — a JM application can be dismissed if a secured creditor/debenture holder is opposed.	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 ten days following the meeting. After presenting the petition to the court in a compulsory winding-up, 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.

	Corporate voluntary arrangement (CVA)	Judicial management (JM)	Scheme of arrangement (SoA)	Winding-up
What entities are excluded from customary insolvency or reorganization proceedings, and what legislation applies to them?	■ Publicly listed companies ■ Licensed institutions or operators of designated payment systems under Bank Negara laws ■ Companies subject to the Capital Markets and Services Act 2007 ■ Companies that create a charge over its property or any of its undertaking	■ Publicly listed companies ■ Licensed institutions or operators of designated payment systems under Bank Negara laws ■ Companies subject to the Capital Markets and Services Act 2007	N/A	N/A
How long does it generally take for a creditor to commence the procedure?	N/A, as directors of the company, commences the procedure with a nominee.	One to three months to make an application for JM	One to three months to apply for leave to commence the creditors' court-convened meeting(s)	Not applicable in a voluntary winding-up. A compulsory winding-up usually takes 2-3two to three months upon presenting the petition to obtain a winding-up order.
Effect of process				
Does 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.	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)? Is the stay or moratorium worldwide?	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.	There is no automatic moratorium in an 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 sees 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.

	Corporate voluntary arrangement (CVA)	Judicial management (JM)	Scheme of arrangement (SoA)	Winding-up
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	There is no specific provision on this matter. This would depend on the terms of the arrangement.	Same as CVA	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 procedure be used to implement debt-to-equity swap?	There is no restriction on debt-to-equity swaps.	Same as CVA	Same as CVA	N/A
Are third-party releases available?	Generally not, unless specifically agreed in the proposal (e.g., the release of third-party security providers/guarantors).	Same as CVA	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?	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 mechanisms to deal with cross-border insolvency proceedings. However, Malaysia has not incorporated this model law into domestic legislation.	Same as CVA	Same as CVA	Same as CVA
Has the UNCITRAL Model Law been adopted?	No	No	No	No
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.	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 offense.	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.

	Corporate voluntary arrangement (CVA)	Judicial management (JM)	Scheme of arrangement (SoA)	Winding-up
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: ■ Preferential debts ■ Insolvent trading ■ Fraudulent trading There are criminal sanctions to directors involved, including imprisonment and fines or both.	Same as CVA	Same as CVA	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	■ Same as CVA	The priority of claims in a winding-up is as follows: ■ Secured creditors, to the extent of the value of their collateral ■ 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 ■ 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 ■ Unsecured creditors ■ Deferred creditors
Do pension liabilities have any priority over other unsecured claims?	N/A	N/A	N/A	N/A
Is it possible to challenge prior transactions?	Yes	Yes	Yes	Yes

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Mexico

	Conciliation	Bankruptcy
Initial considerations		
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 approved by the bankruptcy judge.
What is the nature of the process?	Preserve the company and its operation by means of an agreement between the company and the majority of its recognized creditors. The process lasts 360 calendar days. Otherwise, the company is subject to being declared bankrupt.	Sell the working unit, productive units and assets of the company in order to pay the recognized creditors. In addition, the company is liquidated and closed.
What is the solvency requirement?	A company may be subject to an insolvency proceeding 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] to pay at least 80% of its obligations due on the date of the filing of the petition. General default on the payment of obligations also exists when the debtor does not have the 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.

	Conciliation	Bankruptcy
Is there a requirement to demonstrate center of main interests (COMI)?	Yes, the corporate domicile of the company or the place where it has its main administration. In the 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 establishing the jurisdiction of the federal court.	Yes, it is considered a "domicile" — the corporate domicile of the company or the place where it has the main administration, in the 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 heard the conciliation procedure.
Is restructuring of both secured and unsecured claims possible?	Yes. Reorganization proceedings are flexible, allowing the restructuring of both secured and unsecured claims. Restructuring of the debt under Mexican legislation can occur during the conciliation procedure or through an insolvency procedure that could commence with a restructuring agreement.	During the bankruptcy stage, there can be no restructuring of the debt. Creditors may appeal the resolution that establishes the final amount owed by the debtor.
Is there a classification of creditors and shareholders?	Yes, in this stage, the conciliator prepares the provisional and definitive lists of creditors. Those in the list must recognize the amount, categorization, priority and preference. The classification is as follows: (i) uniquely privileged creditors; (ii) creditors within 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 first settling claims of the previous class. The classification is as follows: (i) uniquely privileged creditors; (ii) creditors within 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 voluntarily 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 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, in order to enter a Conciliation Agreement, the voting approval must be obtained by recognized creditors that represent more than 50% of the sum of: (i) The amount recognized for 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.

	Conciliation	Bankruptcy
Commencing the process		
Who can commence?	(i) The debtor; (ii) any creditor; (iii) the public prosecutor; (iv) the Assets and Properties Administration Institute[1] (an entity 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).	
Is shareholders' consent required to commence proceedings?	Yes, but only when the debtor voluntarily requests the insolvency proceeding.	No
Is there an ability to consolidate group estates?	Commercial bankruptcy proceedings of companies that are part of the 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.	
Who manages the debtor?	The debtor may remain as an administrator of the company (supervised by the conciliator); nevertheless, the conciliator may substitute the debtor if requested to the court.	The trustee.
What is the level of disclosure of process to voting creditors?	Public. The conciliator files a bimonthly report to inform creditors of the company's status. There is no special treatment for different creditors in relation to the disclosure of the conciliation procedure.	Public. The trustee must deliver a bimonthly report to inform on the financial statements, advances, etc.
What entities are excluded from customary insolvency or reorganization proceedings and what legislation applies to them?	Small traders can only be declared 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 of state-owned companies. Other debtors, such as financial entities, are subject to their specific legislation. 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 and subject to bankruptcy.
How long does it generally take a creditor to commence the procedure?	The filing of the request for the publication and declaration of the insolvency may take approximately 60-75 business days.	The judge can declare bankruptcy immediately after concluding the conciliation stage.

1 While the Insolvency Law still references the Assets and Properties Administration Institute (Instituto de Administración de Bienes y Servicios), further to a decree published in the Federal Judicial Gazette on 22 January 2020, the current official name of the entity is Institute to Return Theft Assets to the People (Instituto para Devolver al Pueblo lo Robado).

	Conciliation	Bankruptcy
Effect of process		
Does the debtor remain in possession with the continuation of incumbent management control?	The debtor may continue operating the company, although the conciliator may request the judge to 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 conciliator's supervision. Creditors within rem guarantees have the right to continue execution proceedings against the assets they received as a 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 debtor's capacity 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 the payment twice in the case of noncompliance (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 superpriority financing?	The law establishes superpriority claims. These ranks will be considered during the conciliation 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 the administration of the bankruptcy estate, (ii) payment to privileged creditors, (iii) payment to creditors within 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, and minorities cannot be forced to enter the agreement on those terms.	N/A

	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) the 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 where a foreign procedure is recognized in Mexico and 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
How long, complex and expensive is the process?	The conciliatory stage must be exhausted in 365 calendar days. If no agreement is reached with recognized creditors, the 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 affect the sale of the bankruptcy assets; however, in practice, the time it takes to liquidate the bankruptcy assets is substantially greater than the term provided for by law. The trustee's fees 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 insolvency estate's resources.
Is there a mandatory setoff 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 a monetary consideration was originally 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 clawback period, defraud creditors:

- Entered into with its sole manager or board of directors, or with their respective spouses or unmarried partners,[1] or with blood relatives within the fourth degree, or relatives with no blood relationship within the second degree, including kinship resulting from the 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:

- Voting in board meetings or making determinations related to the merchant's assets with a conflict of interest
- Favoring a shareholder or group of shareholders to the detriment of other shareholders
- Without legitimate cause, by virtue of their employment, position or commission, obtaining an economic benefit for themselves or in favor of third parties
- Generating, disclosing, publishing, providing or ordering information knowing that it is false

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

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 within rem guarantees: As long as the guarantees are duly formalized in accordance to the applicable law (mortgage and pledge). *Note: Creditors within 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 creditors within 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 first settling 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 companies' funds 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 clawback 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.

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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 accounts receivable?	It is possible to take security over all types of assets. These securities, which are subject to a specific formalism, must comply with the rules and be proportionate to the risk of non-payment against which the creditor is seeking to protect itself.		
What is the nature of the insolvency process?	The process is judicial.		
What is the solvency requirement for a company to file a case in this jurisdiction?	Safeguard proceedings may be opened at the request of a company that, without being in the suspension of payment, is facing difficulties that it is unable to overcome and which could lead to suspension of payment in the near future.	The receivership procedure applies to any commercial company that has ceased to pay. The cessation of payment shall be established as soon as the company is unable to meet its current liabilities with its available assets, including claims resulting from commitments made in the context of the amicable agreement. The head of the company shall request the opening of legal redress proceedings at the latest within 30 days following the date of cessation of payment by the company.	The court shall, of its own motion or at the request of the head of the company, a creditor or the public prosecutor's office, pronounce the opening of judicial liquidation proceedings when it appears to it that the company's situation is irremediably compromised.
Is there a requirement to demonstrate centre of main interests (COMI) for a company to file a case in this jurisdiction?	Moroccan law does not refer to COMI. The competent court can be either of the following: ■ The court of the place of the trader's principal place of business ■ The company's registered office		
Is restructuring of both secured and unsecured claims possible?	When the debtor is placed under receivership or court-ordered procedure, creditors holding security interests in the debtor's assets to secure claims contracted prior to the debtor being placed under judicial reorganization or liquidation are, by law, given priority over unsecured creditors whose claims arose after the judicial reorganization or liquidation was declared. The claims are listed and detailed according to whether they are privileged or unsecured. The liquidation proceeds are distributed according to the law. Preferential or mortgage creditors are paid out of the sale price of the properties. Preferential or mortgage creditors who are not paid out of the price of the real estate compete with unsecured creditors for what is still owed to them.		

	Safeguard procedure (procédure de sauvegarde)	Receivership procedure (redressement judiciaire)	Court-ordered liquidation (liquidation judiciaire)
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	There are no specific provisions for shareholders' claims.		
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	There is no need to have the shareholders' agreement. The company director simply files the application with the secretariat of the competent court without any prior vote.	There is no need to have the shareholders' agreement. The company director simply files the application with the secretariat of the competent court without any prior vote. The procedure can also be opened on the basis of a summons from a creditor. The court may also take action of its own motion or at the request of the public prosecutor or the president of the court.	There is no need to have the shareholders' agreement. The court shall, of its own motion or at the request of the head of the undertaking, a creditor or the public prosecutor's office, order the opening of judicial liquidation proceedings.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Creditors can appeal against various decisions taken during the procedure. This appeal is made by declaration to the court clerk's office within ten days of the notification of the decision. It is also possible to lodge an appeal in cassation. The judgment or decision following the appeal will bind the dissenting minority creditors.		
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 shareholder's consent required to commence proceeding?	No.	No. However, such a situation shall be presented to the board of directors or general meetings depending on the company's corporate form. Please note the following: When the manager of the company does not, on their 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 eight days starting from the date such Facts were discovered/disclosed by a registered letter with acknowledgment of receipt. Such a letter should contain an invitation to redress the company's situation. If the company's manager fails to comply within 15 days of receipt, or if they do not achieve a positive result after deliberation by the board of directors or the supervisory board, as the case may be, 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.

	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 the debtor. The court may also order, as the case may be, the constitution of the 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 level of disclosure of process to voting creditors?	N/A	After the creditor assembly is constituted, it shall gather in order to vote on the following: ■ The recovery plan draft ensures the continuation of the business (plan de continuation) ■ The restructuring plan (plan de redressement) ■ A modification of 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 for a creditor to commence the procedure?	Safeguard proceedings can only be requested by the debtor.	In this respect, the 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.
Effect of process			
Does debtor remain in possession with 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 trustee exercises the rights and actions of the debtor concerning its assets.

	Safeguard procedure (procédure de sauvegarde)	Receivership procedure (redressement judiciaire)	Court-ordered liquidation (liquidation judiciaire)
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	N/A	Once the receivership procedure is opened, the following rules apply: ■ Continuity of operations ■ 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 the 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.) ■ 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 ■ Prohibition of any enforcement action by creditors on both movable and immovable assets ■ 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, shall be paid on their due dates during the period of the preparation, as the case may be, of the reorganization or continuation plan ■ Prohibition from paying any claim arising prior to the opening of the receivership procedure ■ Receivership procedures that stop the course of legal and conventional interest rates as well as all interest for late payment and surcharges until the date of the judgment adopting the safeguard or continuation plan	N/A
Is there a provision for debtor in possession or rescuer financing or super priority or priming financing?	No	No. The Moroccan Commercial Code does not refer to such a provision.	No

	Safeguard procedure (procédure de sauvegarde)	Receivership procedure (redressement judiciaire)	Court-ordered liquidation (liquidation judiciaire)
Can procedure be used to implement debt-to-equity swap?	N/A		
Are third-party releases available?	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.		
Has the UNCITRAL Model Law been adopted?	No		
Can a debtor continue to carry on business during insolvency proceedings?	Yes	Yes. A major concern of any receivership procedure is business continuity. In this respect, Article 586 of the 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 the 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. However, please note that the company's managers may be held responsible for their mismanagement (faute de gestion) if it that the mismanagement led to this situation.	If mismanagement contributed to the shortfall in assets, the court might decide that the shortfall shall be borne by some or all of the directors.

	Safeguard procedure (procédure de sauvegarde)	Receivership procedure (redressement judiciaire)	Court-ordered liquidation (liquidation judiciaire)
What is the order of priority of claims?	Claims that regularly arise after the judgment initiating the safeguard proceedings, which are essential to the continuation of the proceedings or to the company's activity 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.	A distinction is made between creditors whose claim arose prior to the receivership opening judgment and those whose claim arose after the receivership opening judgment. Claims that actually arose after the receivership and are essential to the continuation or to the company's activity 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., the lien of employees, public creditors, secured claims, unsecured claims, etc.). A case-by-case analysis is necessary.
Do pension liabilities have any priority over other unsecured claims?	Public institutions manage mandatory pension plans. Thus, an employer's insolvency proceedings would not affect pension provisions.		
Is it possible to challenge prior transactions?	No	No. Prior transactions cannot be challenged. Please note that the principal goals under receivership proceedings are as follows: ■ 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 stop the course of legal and conventional interest rates as well as all interest for late payment and surcharges until the date of the judgment 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.

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Netherlands

Remark: The Netherlands is a member of the European Union. Please refer to the European Union chapter to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. The EU Restructuring Directive is still to be implemented in The Netherlands.

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
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 statutory limitation of transferability are assets used for public service or assets that are exempt from attachment (basic necessities of life such as bed and linen, stock of food and drink; tools of craftsmen; monies in a third-party judicial account). (Articles 475a, 475b-475e, 447, 448, 642c Code of Civil Procedure)	The bankrupt estate cannot effectively encumber its assets with a security interest in bankruptcy.	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 statutory limitation of transferability are assets used for public service or assets exempt from attachment (basic necessities of life (bed and linen, stock of food and drink), tools of craftsmen, monies in a judicial third party account). (Articles 475a, 475b-475e, 447, 448, 642c Code of Civil Procedure)
What is the nature of the process?	Court-ordered suspension of payments (SoP) aims to grant relief to a debtor facing temporary liquidity issues. The effect of 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 the court ordered a Cooling cooling-off Period period). 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 (a "bewindvoerder"), and the debtor can only be represented by the administrator and the board of directors jointly.	Bankruptcy is (primarily) aimed at the liquidation (sale) of the debtor's assets, followed by the distribution of the sales 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). When the bankruptcy is declared, the court appoints a trustee in bankruptcy (a 'curator'"curator"). This trustee will work under the supervision of a supervisory judge. The trustee has the task of administering and liquidating 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 Dutch Scheme is an out-of-court debt-restructuring process that combines Chapter 11 and the English Scheme of Arrangement features. It is an easy-to-use, flexible and short process. The debtor in possession can propose a plan of restructuring. While there are options to involve a restructuring expert or a court-appointed monitor, this is not required. The debtor (or a group of creditors via a court-appointed restructuring expert) prepares and negotiates a plan that may include one or multiple classes of creditors. The voting thresholds are competitive (two-thirds of the amount of debt held by creditors that vote; cross-class cramdown and cram-up). The court can confirm the plan. Moreover, certain protective measures are available during the process (e.g., stay of enforcement, stay of ipso facto clauses in contracts, stay of bankruptcy and suspension of payments procedures, fresh money protection, the appointment of restructuring expert or monitor).

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
	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 into a bankruptcy (if the debtor, in reality, does not have a chance 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 another ground for refusal. The court-confirmed plan binds all creditors that are affected by it.	The effect of bankruptcy can be best 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. In the latter case, court proceedings should be initiated by a creditor to get their claim admitted. Attachments (beslagen) that have been levied against the company will be considered lifted, as the bankruptcy itself is considered an (almost) all-encompassing attachment on the bankrupt company's assets. In a bankruptcy scenario, as an alternative to liquidation, the debtor may make a (going concern) restart, and a composition (binding only unsecured creditors) is also explicitly allowed.	When considering approval of the plan, the court will (apart from certain mandatory checks, for example, in relation to the information provided to relevant creditors) apply the best interest of the creditor's test and the absolute priority rule. Creditors that feel the voting classes' setup is incorrect can protest in court. The plan may also include unilateral amendment or termination of burdensome contracts by the debtor, subject to certain conditions. As a final note, there are public and private proceedings available. Public proceedings are registered in a public register in the Chamber of Commerce's Trade Register, and the hearings are public. Private proceedings are behind closed doors in court and nobody is aware except the parties that are directly involved. There is no registration of private proceedings. The public proceedings meet the requirement of insolvency proceedings under the EU Insolvency Regulation-Recast (implying they are recognized throughout the EU except for Denmark), while jurisdiction and recognition and enforcement of private proceedings are subject to a different regime (of private international law instruments). The rights of employees cannot be changed by a composition plan.
What is the solvency requirement for a company to file a case in this jurisdiction?	The debtor expects that it shall 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).	A liquidity test applies: If a debtor on a reasonable basis foresees that it will not be able to continue paying its debts as they fall due, a composition plan may be offered under the rules of the Dutch Scheme.

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	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 for Denmark?). If so, Dutch courts are competent in the following cases: (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 that is not Denmark, Dutch courts may only open secondary insolvency proceedings. Alternatively, if the EU Insolvency Regulation (recast) does not apply, article 2 DBA includes the test for the court's competence. The Dutch court of the place of the debtor's statutory seat 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 for Denmark?). If so, Dutch courts are competent in the following cases: (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 that is not Denmark, Dutch courts may only open secondary insolvency proceedings. Alternatively, if the EU Insolvency Regulation (recast) does not apply, article 2 DBA includes the test for the competence of the court. The Dutch court of the place of the debtor's statutory seat is competent.	Access to both the public and the private Dutch Schemes is very broad. For a private Dutch Scheme, the Dutch courts will apply article 3 of the Dutch Code of Civil Procedure. Either one of the following criteria must be met: the applicant (debtor or a creditor) has its corporate seat in the Netherlands or one or more of the creditors that would be impacted by the private Dutch Scheme has their corporate seat in the Netherlands. In addition, the courts have jurisdiction in case there is sufficient connection with the Netherlands (this implies: COMI or branch is in the Netherlands; a substantial part of assets are in the Netherlands; a substantial part of a debt is governed by Dutch law or subject to the jurisdiction of Dutch courts; the debtor is part of a group of which a substantial part consists of companies domiciled in the Netherlands; the debtor is guaranteeing a debt subject to the jurisdiction of Dutch courts). For a public Dutch Scheme, the only requirement is that the COMI of the debtor is in the Netherlands or outside the EU in case of sufficient connection with the Netherlands.
Is restructuring of both secured and unsecured claims possible?	The debtor may offer its unsecured and nonpreferential creditors a composition in SoP. The court-confirmed plan binds all creditors that are 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.	Yes, both secured and unsecured claims can be part of the composition plan (the rules allow for a lot of flexibility for the debtor and the creditors to negotiate). The court-confirmed plan binds all creditors that are affected by it.
Is there a classification of creditors and shareholders?	SoP only affects unsecured creditors and creditors who do not have a preference right.	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 nonstatutory (e.g., retention of title, set-off, right to retain property) priority; and estate creditors (having claims against the bankrupt estate that the bankrupt estate incurred). These are all "absolute" positions (i.e., these positions have an effect on 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.	Creditors and shareholders will be classed differently if the following are so different that these creditors are not in a comparable position: - The rights they have upon liquidation of the company's assets - The rights that they will get upon liquidation of the company's assets - The rights that they will get upon implementation of the composition plan Each class will be proposed a separate composition plan to vote on Creditors that rank differently between them on the basis of their security or preferred position will, in any event, be classed separately. This refers to mortgages, pledges, retention of title, preferences, and subordination of debt. Tax effects may also be taken into account when forming classes.

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
Is there a requirement for voting approvals by shareholders?	To file a petition for (preliminary) SoP, the debtor's board of directors does not need the shareholders' approval. Moreover, there are two relevant votes within the SoP procedure: (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. ■ 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 approve the composition, the composition may be submitted to the court for confirmation (homologatie). Court confirmation of the composition makes it binding also for dissenting creditors. However, the court may still confirm the composition as if it were approved if three-quarters of the number of admitted creditors voted in favor (that jointly do own less than half of the admitted claims) and if the other creditor(s)' vote is deemed unreasonable in view of the recovery of their debt in a bankruptcy/liquidation scenario. 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 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 approve the composition, the composition may be submitted to the court for confirmation (homologatie). Court confirmation of the composition makes it binding also for dissenting creditors. However, the court may still confirm the composition if three-quarters of the number of admitted creditors voted in favor (that jointly do own less than half of the admitted claims) and the other creditor(s)' vote is deemed unreasonable in view of the recovery of their debts in a liquidation scenario. There are no specific voting requirements for shareholders.	No, the same regime applies to creditors and shareholders, i.e.: ■ Who can vote: creditors and shareholders whose rights are impacted by the composition plan ■ Voting is done per class of shareholders or creditors. ■ A notice period of at least eight days must be observed. ■ Voting threshold is two-thirds of the total amount of debt (or nominal capital) that participates in the vote per class. ■ Each class votes on their own plan. ■ Voting may be in a physical meeting, in digital form or in writing. ■ Voting outcome is to be communicated by the debtor within seven days by way of minutes of the meeting of the voting, as well as the intention to file with the court for confirmation.
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.	Shareholders may participate in the voting on the composition if they are unsecured creditors without a right of preference.	No. Shareholders may participate in the voting. There may even be separate classes of shareholders (depending on the impact of a plan on their rights or of liquidation of the company's assets on their rights and whether they enjoy certain preferences or not).
Is there an ability to bind minority dissenting creditors?	Yes, by 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 approve the composition, the composition may be submitted to the court for confirmation. Court confirmation of the composition makes it binding also for dissenting creditors. However, the court may still confirm the composition as if it were approved if three-quarters of the number of admitted creditors voted in favor (that jointly do own less than half of the admitted claims) and if the other creditor(s)' vote is deemed unreasonable in view of the recovery of their debt in a bankruptcy/liquidation scenario.	Yes, by 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 approve the composition, the composition may be submitted to the court for confirmation. Court confirmation of the composition makes it binding also for dissenting creditors. However, the court may still confirm the composition as if it were approved if three-quarters of the number of admitted creditors voted in favor (that jointly do own less than half of the admitted claims) and if the other creditor(s)' vote is deemed unreasonable in view of the recovery of their debt in a liquidation scenario.	Yes, there is an ability to bind minority dissenting creditors. Ratification (or confirmation) of the plan by the court is required to bind all creditors (in all classes). In order to be eligible for ratification, at least one class of creditors needs to have approved the plan. If the plan includes one or more classes of creditors that are fully or partially in the money, the composition plan needs to be approved by at least one of the "in the money" classes of creditors to be eligible for court ratification.

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
Commencing the process			
Who can commence?	The board of directors	The board of directors or a creditor	A Scheme can be initiated by the debtor (by depositing a scheme declaration with the court). The debtor may prepare a composition plan or request the court to appoint a restructuring expert. Creditors, shareholders or the works council may also initiate a Scheme (with a request to the court to appoint a restructuring expert who will prepare a composition plan on behalf of the debtor).
Is shareholders' consent required to commence proceedings?	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).	No
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 bankruptcy is appointed and the same supervisory judge.	Yes, groups of companies can jointly do a Dutch Scheme. The group has to meet certain criteria testing economic and organizational unity. Moreover, especially if certain group companies would be foreign companies, for each of them the Dutch court must be competent (i.e., COMI in the Netherlands or sufficient nexus). Note that each company must meet the criteria that it (on a reasonable basis) foresees that it cannot continue to pay its debts as they fall due.
Is there any court involvement?	Yes, to grant preliminary SoP, then organize a hearing/vote on final SoP, and then confirm the composition.	Yes, to declare the debtor bankrupt (and appoint a trustee in bankruptcy and a supervisory judge), and then through the supervisory judge mostly. In case of composition in bankruptcy, the court organizes a hearing/vote and confirms the composition.	Yes, there is court involvement to get the composition plan ratified (and additional involvement where needed, e.g., if a creditor or shareholder initiates the Scheme process, with the appointment of a restructuring expert, or to seek certain protective measures). The setup of the process is lean and mean and aims to balance the protection of the parties involved with as little court involvement as possible.
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 BoD, for example, votes in the GM of a subsidiary still notwithstanding the parent company's bankruptcy).	The Scheme is a debtor-in-possession instrument, i.e., the debtor manages itself.

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
What is the level of disclosure of process to voting creditors?			There are formal requirements that the draft composition plan must meet and there are timing requirements (a notice period of at least eight days must be taken into account between offering the plan to a class of creditors and the vote). The information that must be provided includes: ■ The various classes of creditors and criteria for application of the classes ■ Financial consequences per class of creditors. ■ The expected value that can be realized if the plan materializes (reorganization value) ■ The amount of proceeds that will likely be realized upon a bankruptcy liquidation ■ The assumptions on which the reorganization value and the liquidation proceeds are based ■ Any fresh money required and reasoning as to why that is necessary ■ The voting procedure ■ Works council advice as sought and provided during the process Moreover, a detailed breakdown and analysis of the financial situation and of the plan will have to be made available to the creditors, which includes: ■ Overview of all assets and liabilities ■ Details of all affected creditors/shareholders and the debts/shares they hold ■ Details of unaffected creditors/shareholders with an explanation why they are not included in the plan ■ Description of causes of financial difficulties and efforts to resolve these ■ Description of the effects of the plan on the debtor ■ Timeline of plan implementation

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
What entities are excluded from customary insolvency or reorganization 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, nonpublic partnerships (niet openbare maatschappen) are excluded.	The Dutch Scheme is meant for businesses (i.e., excluding individuals that do not operate a business). Banks and insurance companies are excluded as well. Moreover, excluded are parties in relation to whom the court has refused to ratify a plan in the past three years or where all classes voted against the proposed plan. There is one exception: if a restructuring expert is appointed.
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.	Creditors can commence a Dutch Scheme by filing a petition with the court to appoint a restructuring expert (short timeline).
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.	Yes. The debtor remains in possession. If a restructuring expert is appointed, his role is to prepare a plan.
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 were no bankruptcy.	A stay of enforcement can be requested in court by the debtor (for the duration of four months + four months' extension). The stay of enforcement can be requested as soon as a Scheme Declaration is filed, while the debtor needs to confirm it has already offered a composition plan to its creditors or will do so within two months. During the stay, creditors cannot enforce their rights against the debtor, nor can third parties reclaim their assets with the debtor unless the court would specifically allow the debtor to do so. The court may also lift seizures that creditors put over the debtor's assets. Bankruptcy and suspension of payments' petitions are also stayed. The stay can be general (all assets) or limited to specific creditors/assets. The court will allow a stay (i) if a stay is required to protect the debtor's business during the Dutch Scheme proceedings and (ii) if it is reasonable to believe that the stay best serves the interests of the joint creditors and the interests of individual creditors are not materially affected.

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
Is there a provision for debtor in possession superpriority financing?	No, Dutch law does not include a provision for debtor-in-possession (DIP) super-priority financing in SoP.	No, Dutch law does not include a provision for DIP superpriority financing in bankruptcy.	The Dutch Scheme allows for fresh money protection. The debtor must show that: ■ Attracting fresh money and providing security is necessary to protect the going-concern business during the scheme process. ■ This is in the best interest of joint creditors. ■ No individual creditor is materially affected. In which case the court will grant leave to the debtor to enter into transactions such as providing security interests over assets against being provided with fresh money. With leave being granted, these transactions cannot be subjected to clawback if the restructuring fails (Actio Pauliana).
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	Yes, a debt-to-equity swap can be part of the plan.
Are third-party releases available?	No	No	The guarantees and sureties provided by affiliates in connection with debts owed by the debtor can be restructured as part of the Dutch Scheme. The following requirements must be met: ■ These affiliates are within the same group as the debtor (organizationally connected via central leadership in a group that acts as an economic unity). ■ These affiliates can reasonably assess that they will not be able to pay their debts as they fall due. ■ The court has jurisdiction over these affiliates if they would file for a Dutch Scheme individually.
Are the proceedings recognized abroad?	Yes, under the regime of the EU Insolvency Regulation.	Yes, under the regime of the EU Insolvency Regulation.	Yes, public Dutch Scheme as per the regime of the EU Insolvency Regulation-Recast and private Dutch Schemes as per other private international law instruments of the jurisdiction where enforcement is sought (e.g., treaties or model laws). The latter also applies when enforcement of a public Scheme is sought in a non-EU member state or in Denmark.
Has the UNCITRAL Model Law been adopted?	No	No	No

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
How long, complex and expensive is the process?	The final SoP is declared for a maximum period of 1.5 years (which can then be extended for another period of 1.5 years). The procedure is not very expensive nor is it very complex.	Bankruptcy generally lasts up to three years. The procedure is not very expensive, nor is it very complex.	Depending on the complexity of the restructuring, the process could be quick and not very expensive. Filing a Scheme Declaration is generally the starting point (or the appointment of a restructuring expert) and the preparation time required for the plan is generally decisive for the timeline. Moreover, the notice period between the offering of a plan and the voting (eight days minimum) has to be taken into account. And following the vote, communication of the voting results must be done within seven days after the vote. After the voting phase, a court may decide on a ratification request soonest, which may even be within seven to 14 days of the filing. In complex restructurings or where objections have been filed, the timeline may, of course, be longer.
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?	Yes, but the debtor can only be jointly represented by the board of directors and the court court-appointed administrator.	Yes, but only if the trustee in bankruptcy thinks a restart (going concern) is feasible.	Yes, as these are DIP proceedings aimed at continuing the business.
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 indeed 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 (which 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 should have reasonably known that) the company cannot fulfill its obligations and offer no recourse for damages suffered as a consequence thereof. (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).	The threshold for having access to the Dutch Scheme proceedings (i.e., the company can reasonably assess that it will not be able to continue to pay its debts as they fall due) is meant to reflect a pre-insolvency situation (where insolvency is reasonably likely to occur on a reasonably short term). Hence, there should be no specific liability risk for directors (unless in reality, the company is already insolvent). However, directors must at all times be mindful of the financial situation of the company and the implications thereof for creditors.

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
		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 nonpayment 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 nonpayment was caused by the culpable manifestly improper performance of duties by the directors.	
What is the order of priority of claims?	N/A	■ Secured creditors (with a mortgage (recht van hypotheek) or a pledge (pandrecht)) ■ Estate creditors (boedelcrediteuren) (having claims against the bankrupt estate that the bankrupt estate incurred) ■ Preferred creditors with a statutory (e.g., tax and social security administrations) or nonstatutory (e.g., retention of title, set-off, right to retain property) priority ■ 4. Unsecured/nonpreferred creditors	N/A There will be separate classes of creditors and/or shareholders that each can vote on their own plan.
Are there any pension liabilities?	N/A	For certain types of pension funds (bedrijfstakpensioenfondsen), there is an obligation to notify if the company cannot pay its pension debts when they fall due. Failing to notify the pension fund properly leads to a personal liability risk for the director(s).	No

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
Is it possible to challenge prior transactions?	Under Dutch law, it is possible outside 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 nonobligatory (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. 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 Actio 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 that 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	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 nonobligatory (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. 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 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 that 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	Under Dutch law, it is possible outside 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 Actio Pauliana to apply: ■ The legal act must be nonobligatory (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 he acted to the detriment of creditors in order for the Actio Pauliana to be accepted at the time the legal act was performed. 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 Actio 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 that 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

	Suspension of payments (Surseance van betaling)	Bankruptcy (Faillissement)	Dutch scheme of arrangement (WHOA)
	■ 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 and/or other party by providing evidence to the contrary.	■ 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 and/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 a conspiracy between the debtor and the other party to defraud creditors. Once demonstrated, evidence to the contrary is no longer allowed.	■ 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 and/or other party by providing evidence to the contrary.

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Peru

	Preventive insolvency proceeding	Ordinary insolvency proceeding
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	Yes. The non-bankruptcy Law applies.	Yes. If granting security is not part of the ordinary course of business, necessary to wait until the creditors' meeting is in place and approves the transaction.
What is the nature of the insolvency process?	As per the debtor's request, the bankruptcy authority (INDECOPI) mediates to gather creditors, and the debtor proposes a global refinance agreement (AGR) at the creditors' meeting. The proceeding concludes with the decision whether the AGR is approved or disapproved.	As per 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 liquidation. The creditors' meeting assumes the role of the shareholders' meeting (or equivalent body), and the proceeding does 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 debtor's bankruptcy.
What is the solvency requirement for a company to file a case in this jurisdiction?	The debtor must (still) be solvent. It must not be in any of these situations: ■ More than one-third of its debts are due for payment for more than 30 days. ■ Its net worth is lower than two-thirds of the paid-in capital.	In voluntary proceedings, the debtor must not be in any of these situations: ■ More than one-third of its debts are due for payment for more than 30 days. ■ Net worth is lower than two-thirds of the paid-in capital. In involuntary proceedings, the petitioner(s) must hold a claim for more than 50 tax units (approximately USD 55K in 2021) that is due for payment for 30 days and is enforceable.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	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 the proceeding. 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 proceeding in the applicable jurisdiction.
Is restructuring of both secured and unsecured claims possible?	Yes	Yes

	Preventive insolvency proceeding	Ordinary insolvency proceeding
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	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 voting as follows: ■ 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 ■ In the second call: more than 66.6% of the claims were held by the attending connected creditors, and other attending creditors held more than 66.6% of the registered claims If creditors connected to the debtor do not represent more than 50% of the registered claims, only one voting is required (with the same majority requirements). Also, creditors are classified as labor, alimony, secured, tax and unsecured creditors, but such classification is mainly relevant if the preventive insolvency proceeding turns into an ordinary insolvency proceeding. Generally, there is flexibility for classifying credits for payment purposes under the AGR, provided that there is no unfair discrimination or violation of any law. Shareholders are not part of the proceeding and are not classified. In that sense, they do not have voting rights and are not considered as creditors under the plan.	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 voting as follows: ■ 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. ■ 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 voting is required (with the same majority requirements). Also, creditors are classified as labor, alimony, secured, tax and unsecured creditors. 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 proceeding and are not classified. In that sense, they do not have voting rights and are not considered as creditors under the plan. Nevertheless, they have certain rights that must be respected by the creditors' meeting, such as pre-emptive rights in case of capital increase.
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	Depending on the debtor's bylaws, a shareholders' resolution could be required for filing the request. Only the creditors during the insolvency proceeding will vote on the AGR, not shareholders.	Voluntary proceeding: Depending on the debtor's bylaws, a shareholders' resolution could be required to file the request. Involuntary proceeding: No. Only the creditors during the insolvency proceeding will vote on the restructuring plan, not shareholders.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	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 shareholder's consent required to commence proceeding?	Depending on the debtor's bylaws, a shareholders' resolution could be required for filing the request.	Voluntary proceeding: Depending on the debtor's by-laws, a shareholders' resolution could be required to file the request. Involuntary proceeding: No

	Preventive insolvency proceeding	Ordinary insolvency proceeding
Is there an ability to consolidate group estates?	No	No
Is there any court involvement?	The final decision from the bankruptcy authority's second instance (INDECOPI's Tribunal) can be challenged in courts. Clawback provisions are only enforceable in courts.	The final decisions from the bankruptcy authority's second instance (INDECOPI's Tribunal) can be challenged in courts. Clawback provisions are only enforceable in courts.
Who manages the debtor?	The commencement of the proceeding 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 retain the same management,retain 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 level of disclosure of 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, financial system entities, and insurance system entities are governed by their respective laws. Trusts are also excluded and their liquidation is subject to the corresponding trust agreement.	Governmental entities, private pension fund managers, financial system entities, and insurance system entities are governed by their respective laws. Trusts are also excluded and their liquidation is subject to the corresponding trust agreement.
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.

	Preventive insolvency proceeding	Ordinary insolvency proceeding
Effect of process		
Does debtor remain in possession with continuation of incumbent management control?	Yes	No. the Continuation of incumbent management depends on the decision of the creditors' meeting.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	An automatic stay (from the date the proceeding is made public in the INDECOPIs Bankruptcy Newsletter) can be requested by the debtor in its petition. If the automatic stay is requested and the creditors' meeting disapproves the AGR, more than 50% of the registered claims or attending claims in said creditors' meeting can agree with the immediate commencement of an ordinary insolvency proceeding. The automatic stay is worldwide as the creditors can only collect their credits within the insolvency proceeding, following Peruvian regulations.	An automatic stay applies from the date the proceeding is made public through the INDECOPI's Bankruptcy Newsletter, prohibiting creditors from attempting to collect pre-publication debts or seize assets. The automatic stay is worldwide as the creditors can only collect their credits within the insolvency proceeding, following Peruvian regulations.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	No, but creditors can approve superpriorities 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 superpriorities 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 preferred over any category of claim.
Can procedure be used to implement debt-to-equity swap?	No	Yes. The creditors' meeting can approve the capitalization of commercial claims (neither labor nor tax), but shareholders' pre-emptive rights must be respected.
Are third-party releases available?	Yes, in accordance with the terms of the AGR.	Yes, in accordance with the terms of the restructuring plan or liquidation agreement.
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
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. If the debtor filed for a voluntary proceeding and it has a negative net worth (more liabilities than assets in its balance sheet), it must stop carrying on business once the bankruptcy authority decides the commencement of the insolvency proceeding. Once the creditors' meeting is in place, it could take measures to revert the negative net worth and agree to restructure (instead of liquidation).

	Preventive insolvency proceeding	Ordinary insolvency proceeding
Other factors		
Are there any wrongful or insolvent trading restrictions, and what is the directors' liability?	N/A	The board of directors must call the shareholders' meeting to inform any insolvency situation, but it is not mandatory to commence an insolvency proceeding. 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 (i.e., there are not enough assets to pay liabilities). Having a net worth lower than two-thirds of the paid-in capital is a cause for dissolution. This does not change the company's capacity but triggers a special liability regime for all those acting on behalf of the company (only if damages occur).
What is the order of priority of claims?	N/A	This order of priority applies to payments under liquidation: ■ Labor claims ■ Alimony ■ Secured claims ■ Tax claims ■ 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.
Do pension liabilities have any priority over other unsecured claims?	Unpaid contributions to pension funds are part of the debts subject to the proceeding and are considered labor claims, but such classification is mainly relevant if the preventive insolvency proceeding turns into an ordinary insolvency proceeding.	Unpaid contributions to pension funds are part of the debts subject to the proceeding 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 to 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 to the creditors' ability to collect.

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Philippines

	Court-supervised rehabilitation	Liquidation	Out-of-court rehabilitation (prenegotiated rehabilitation and out-of-court restructuring agreements)
Initial considerations			
Can you take security over all types of assets, including accounts receivable?	**[Applies in general]** 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. A chattel mortgage may be constituted over goods in retail stores by way of exception. In such case, goods acquired after such constitution, in a 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. While the Philippines Personal Property Security Registry (PPSR) has had an informal launch, where individual and juridical entity users may access the registry by creating new user accounts, the PPSR is not yet fully established and operational. There is also no prohibition from acquiring accounts receivable.		
What is the nature of the insolvency 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 nonadversarial manner in accordance with applicable rules of procedure.	Same as court-supervised rehabilitation	Prenegotiated 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 nonadversarial manner in accordance with applicable rules of procedure.

	Court-supervised rehabilitation	Liquidation	Out-of-court rehabilitation (prenegotiated rehabilitation and out-of-court restructuring agreements)
What is the solvency requirement for a company to file a case in this country?	Companies filing for voluntary rehabilitation or liquidation must be insolvent, as defined under the Financial Rehabilitation and Insolvency Act (FRIA). A company is generally considered insolvent when its financial condition generally disallows 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 insolvent when its assets are greater than its liabilities, including all monetary claims against the debtor, even stockholder's advances recorded in the debtor's audited financial statements as advances for future subscriptions.		Not applicable since these are out-of-court processes.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this country?	In general, no. There is a disputable presumption that the debtor's registered office 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 debtor's assets.	Yes, as long as this is stipulated and agreed upon by the relevant parties.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	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. The classification of creditors is important since the treatment or voting requirements for particular processes under the FRIA depend on groups of certain creditors. By way of example, the issuance of commencement/stay/suspension orders shall not be deemed a diminution or impairment of the security or lien of a secured creditor or the value of their lien or security. Further, the classification of creditors is also important for prenegotiated rehabilitation since a prenegotiated rehabilitation plan will have to be approved by creditors holding at least two-thirds of the debtor's total liabilities, including secured creditors holding more than 50% of the debtor's total secured claims and unsecured creditors holding more than 50% of the debtor's total unsecured claims. Moreover, a liquidation order shall not affect the right of a secured creditor to enforce their lien in accordance with the applicable contract or law. 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.		

	Court-supervised rehabilitation	Liquidation	Out-of-court rehabilitation (prenegotiated rehabilitation and out-of-court restructuring agreements)
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	Yes, shareholder approval is required to commence voluntary rehabilitation proceedings. However, shareholders are not entitled to vote on the rehabilitation plan. In order to commence voluntary liquidation proceedings, there should be a majority vote of the board of directors or trustees and an affirmative vote of the shareholders representing at least two-thirds of the outstanding capital stock or at two-thirds of the members in a nonstock corporation.	Yes, shareholder approval is required to commence voluntary liquidation proceedings. However, shareholders are not entitled to vote on the liquidation plan. Similar to court-supervised rehabilitation proceedings, the filing of the petition should be approved by two-thirds of the outstanding capital stock of a corporation or two-thirds of the members or partners in a nonstock corporation, association or partnership.	Not applicable since these are out-of-court processes. 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 nonstock 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 an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes.	Yes.	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 of the debtor, whichever is higher.	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.	**Prenegotiated 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 prenegotiated 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 proceedings?	Yes, if voluntarily commenced by the debtor.	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 insolvent debtor's assets.
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.		

	Court-supervised rehabilitation	Liquidation	Out-of-court rehabilitation (prenegotiated rehabilitation and out-of-court restructuring agreements)
Is there any court involvement?	Yes. In general, the court supervises the entire process.	Yes. In general, the court supervises the entire process.	Yes. Prenegotiated rehabilitation plan The court supervises the process and ultimately approves the prenegotiated 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.
What is the 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.	Prenegotiated rehabilitation plan Relevant information, such as the assets, debts and the prenegotiated 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.

	Court-supervised rehabilitation	Liquidation	Out-of-court rehabilitation (prenegotiated rehabilitation and out-of-court restructuring agreements)
What entities are excluded from customary insolvency or reorganization proceedings, and what legislation applies to them?	The Philippines' financial rehabilitation and insolvency law 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 nonbanks with quasi-banking functions and trust entities are governed by the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI);[1] (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 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.
Effect of process			
Does debtor remain in possession with continuation of incumbent management control?	Yes, the debtor remains in possession of 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 of the continuation of incumbent management control.

1 The MORB and the MORNBFI are the compilation of regulations issued and promulgated by the BSP.

	Court-supervised rehabilitation	Liquidation	Out-of-court rehabilitation (prenegotiated rehabilitation and out-of-court restructuring agreements)
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	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 of 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 FRIA and the Financial Rehabilitation Rules of Procedure ("FR Rules") are silent as to whether such a stay or moratorium will apply outside the Philippines. However, the FR Rules provide that a commencement order for rehabilitation proceedings shall direct the petitioner to serve copies of the order to foreign creditors at their foreign addresses so that they will receive the order at least 15 days before the initial hearing.	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 The FRIA and the Financial Liquidation and Suspension of Payments Rules ("FL Rules") are likewise silent as to whether such stay or moratorium will apply outside the Philippines. Notably, unlike the FR Rules, the FL Rules do not direct the petitioner to furnish foreign creditors with a copy of the petition.	With respect to a prenegotiation 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, including whether the application is worldwide, 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 The FRIA and the FR Rules are silent as to whether such a standstill period will apply outside the Philippines.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	There is no specific provision on debtor-in-possession or rescuer financing or superpriority or priming 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, rescuer financing or superpriority or priming 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.
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 recognized abroad?	This will depend on the jurisdiction in which recognition is applied for.		

	Court-supervised rehabilitation	Liquidation	Out-of-court rehabilitation (prenegotiated rehabilitation and out-of-court restructuring agreements)
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).		
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	No, because the entity is dissolved upon issuance of a liquidation order. The only affairs that may be conducted are those related to the winding up of the business.	Yes.
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 debtor's ordinary course of business 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: ■ 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 ■ 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: ■ 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 ■ 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: ■ 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 ■ 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.

	Court-supervised rehabilitation	Liquidation	Out-of-court rehabilitation (prenegotiated 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.	Administrative expenses are to be paid as they become due during the liquidation proceedings, unlike other obligations that are subject to a stay or suspension order. Administrative expenses consist of reasonable and necessary expenses: ■ Incurred or arising from the 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 is 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 the 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. Under Article 2247 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.	Same as in court-supervised rehabilitation. Any out-of-court rehabilitation plan must comply with the minimum requirements of a rehabilitation plan.

Court-supervised rehabilitation	Liquidation	Out-of-court rehabilitation (prenegotiated rehabilitation and out-of-court restructuring agreements)
	Article 2241 of the Civil Code enumerates the special preferred credits with respect to a specific movable property, as follows: ■ 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 ■ 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. ■ 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 ■ Credits for the making, repair, safekeeping or preservation of personal property, on the movable thus made, repaired, kept or possessed ■ Claims for laborers' wages on the goods manufactured or the work done ■ For expenses of salvage, upon the goods salvaged ■ Credits between the landlord and the tenant, arising from the contract of tenancy on shares, on the share of each in the fruits or harvest ■ Credits for transportation, upon the goods carried, for the price of the contract and incidental expenses, until their delivery and for 30 days thereafter ■ Credits for lodging and supplies, usually furnished to travelers by hotel keepers, on the movables belonging to the guest as long as such movables are in the hotel, but not for money loaned to the guests ■ Credits for seeds and expenses for cultivation and harvest advanced to the debtor, upon the fruits harvested ■ Credits for rent for one year, upon the personal property of the lessee existing on the immovable leased and on the fruits of the same, but not on money or instruments of credit	

- Claims in favor of the depositor if the depositary has wrongfully sold the thing deposited, upon the price of the sale

On the other hand, Article 2242 of the Civil Code enumerates the special preferred credits with respect to an immovable property and real rights, as follows:

- Taxes due upon the land or building
- For the unpaid price of real property sold, upon the immovable sold
- Claims of laborers, masons, mechanics and other workmen as well as of architects, engineers and contractors, engaged in the construction, reconstruction or repair of buildings, canals or other works, upon said buildings, canals or other works
- Claims of furnishers of materials used in the construction, reconstruction or repair of buildings, canals or other works, upon said buildings, canals or other works
- Mortgage credits recorded in the Registry of Property upon the real estate mortgaged
- Expenses for the preservation or improvement of real property when the law authorizes reimbursement, upon the immovable preserved or improved
- 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
- Claims of co-heirs for warranty in the partition of an immovable among them, upon the real property thus divided
- Claims of donors of real property for pecuniary charges or other conditions imposed upon the done, upon the immovable donated
- 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:

- Proper funeral expenses for the debtor, or children under their parental authority who have no property of their own, when approved by the court

Court-supervised rehabilitation	Liquidation	Out-of-court rehabilitation (prenegotiated rehabilitation and out-of-court restructuring agreements)
	■ Credits for services rendered the insolvent by employees, laborers or household helpers for one year preceding the commencement of the proceedings in insolvency ■ Expenses during the last illness of the debtor or of their spouse and children under their parental authority, if they have no property of their own ■ 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 ■ Credits and advancements made to the debtor for supporting themselves and their family during the last year preceding the insolvency ■ Support during the insolvency proceedings and for three months thereafter ■ Fines and civil indemnification arising from a criminal offense ■ 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 ■ Taxes and assessments due to the national government, other than those mentioned in Articles 2241, No. 1, and 2242, No. 1 ■ Taxes and assessments due to any province, other than those referred to in Articles 2241, No. 1, and 2242, No. 1 ■ Taxes and assessments due to any city or municipality, other than those indicated in Articles 2241, No. 1, and 2242, No. 1 ■ Damages for death or personal injuries caused by a quasi-delict ■ Gifts due to public and private institutions of charity or beneficence ■ 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 Credits of any other kind of class (nonpreferred, common credit) not included in Articles 2241, 2242 and 2244 will not enjoy any preference. 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.	

	Court-supervised rehabilitation	Liquidation	Out-of-court rehabilitation (prenegotiated rehabilitation and out-of-court restructuring agreements)
Do pension liabilities have any priority over other unsecured claims?	There is no specific provision under Philippine law concerning pension liabilities in the context of rehabilitation or liquidation. Likewise, there is no specific provision stating that they will have priority over unsecured claims.		
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 constitutes undue preference of creditors, may be the subject of rescission.	Same as rehabilitation.	The law is silent.

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Saudi Arabia

	Protective Composition Plan (PCP)	Financial Restructuring Plan (FRP)	Liquidation Procedure / Administrative Liquidation Procedure (ALP)
Initial considerations			
Can you take security over all types of assets, including accounts receivable?	Prior to the commencement of the PCP: Yes, security can be taken over all types of assets (including security over accounts receivable). Security is created under non-bankruptcy laws. Post the commencement of the PCP: Yes, in relation to secured DIP financing and subject to the court's approval (i.e., the court may approve secured DIP financing if it is seen to be required for the business to operate and/or for the preservation of the bankruptcy estate). Criteria: Secured DIP financing is permissible to the extent it is required for the business to continue operations and to preserve the bankruptcy assets.	Prior to the commencement of the FRP: Yes, security can be taken over all types of assets (including security over accounts receivable). Security is created under non-bankruptcy laws. Post the commencement of the FRP: Yes, in relation to secured DIP financing and subject to the court's approval (i.e., the court may approve secured DIP financing if it is seen to be required for the business to operate and/or for the preservation of the bankruptcy estate). Criteria: Secured DIP financing is permissible to the extent it is required for the business to continue operations and to preserve the bankruptcy assets.	Prior to the commencement of the Liquidation procedure/ALP: Yes, security can be taken over all types of assets (including security over accounts receivable). Security is created under non-bankruptcy laws. Post the commencement of the Liquidation procedure: Yes, in relation to secured new financing and subject to there being a favorable vote from the creditors and approval from the court. Criteria: Secured new financing is permissible to the extent it is required to preserve the bankruptcy assets or increase the sale proceeds. Post the commencement of an ALP: No.
What is the nature of the insolvency process?	The PCP is a debtor-led, court-supervised rescue procedure, which can only be commenced by a debtor who meets the solvency requirements (outlined below). The PCP is viewed as a relatively uncomplicated procedure, is pursued when a debtor's business is likely to continue as a going concern and where the debtor is only dealing with a few classes of creditors. It allows a debtor to continue running its business with minimal intervention while simultaneously reaching a settlement plan with its creditors within a reasonable timeframe. An application (together with a proposal that a licensed trustee ratifies) must be made to the court. Only a debtor can apply for a PCP.	The FRP is a trustee-led, court-supervised rescue procedure, which is available when a debtor's business is financially viable, subject to the debtor who meets the solvency requirements and as long as the debtor's total debt exceeds SAR 2 million. The ultimate purpose of an FRP is to restructure the business of the debtor pursuant to a proposal that is discussed with, and agreed by, the creditors. During the FRP, the debtor continues to manage the business under the supervision of the trustee (e.g., filing any claims must be pre-authorized by the trustee). An application must be made to the court, and when approved by the court, the procedure commences. The debtor, creditor(s) or any interested parties (e.g., regulator — if the debtor is a regulated entity) can apply for an FRP. Note that once an FRP commences, the debtor, its shareholders, its board/managers and auditors are exempt from the requirements under Article 181 of the Saudi Companies Law, which imposes certain liabilities and obligations on a debtor's board/managers and shareholders in cases where the debtor's losses reach 50% of its capital.	Liquidation procedure A Liquidation procedure is a trustee-led, court-supervised procedure which is available to a debtor that is going through actual financial distress (with a total debt exceeding SAR 2 million), where it is evident that a rescue plan to save the business is not viable and where the shareholders have no desire to provide the debtor with financial support. Unlike the PCP or the FRP, which are not compulsory, the debtor is likely to be under a legal obligation to cease doing business if insolvency is inevitable. The procedure ensures an efficient realization of the bankruptcy estate's assets and fair distribution to creditors. Based on the premise that value maximization is key, businesses under the Bankruptcy Law (BL) can be sold as a "going concern" rather than on a piecemeal basis (which is the only way the assets of a bankruptcy estate could be sold under the previous bankruptcy regime).

	Protective Composition Plan (PCP)	Financial Restructuring Plan (FRP)	Liquidation Procedure / Administrative Liquidation Procedure (ALP)
			An application must be made to the court, and when approved by the court, the procedure commences. The debtor, creditor(s) or any interested parties (e.g., regulator — if the debtor is a regulated entity) can apply for a Liquidation procedure. ALP If a debtor is distressed or insolvent and it is envisaged that the sale proceeds of the debtor's assets will not cover the costs and expenses associated with the Liquidation procedure: ■ the debtor or its regulator (if it is a regulated entity) may apply for an ALP; or ■ an existing trustee-led Liquidation procedure may turn into an ALP upon the debtor's request or at the court's decision. Under the umbrella of the Ministry of Commerce (MOC), the Bankruptcy Commission leads the ALP and takes charge of the business, the sale of the debtor's assets, and payment of all required expenses. The procedure is short, i.e., it must be completed within a year, with a possible extension of a further 90 days. An application must be made to the court, and when approved by the court, the procedure commences. The debtor, creditor(s) or any interested parties (e.g., regulator — if the debtor is a regulated entity) can apply for a Liquidation procedure.
What is the solvency requirement for a company to file a case in this jurisdiction?	PCP is an option if the debtor: (i) is likely to suffer from financial difficulties leading to distress; (ii) is distressed (i.e., stopped paying its debts when due); or (iii) is insolvent (i.e., whose debts have consumed all of its assets). Additionally, the debtor must be more likely to remain in business, the claims of creditors must be more likely to be settled within a reasonable time, and the debtor must have not been subject to PCP during the 12 months preceding the PCP petition.	FRP is an option if the debtor: (i) is likely to suffer from financial difficulties leading to distress; (ii) is distressed (i.e., stopped paying its debts when due); or (iii) is insolvent (i.e., whose debts have consumed all of its assets). Furthermore, the debtor's total debt must exceed SAR 2 million. Additionally, the debtor must be more likely to remain in business, the claims of creditors must be more likely to be settled within a reasonable time, and the debtor must have not been subject to FRP during the 12 months preceding the FRP petition.	The liquidation procedure is an option if the debtor: (i) is distressed (i.e., stopped paying its debts when due); or (ii) is insolvent (i.e., whose debts have consumed all of its assets). Furthermore, the debtor's total debt must exceed SAR 2 million. ALP is an option if the debtor: (i) is distressed (i.e., stopped paying its debts when due); or (ii) is insolvent (i.e., whose debts have consumed all of its assets) and it is determined that the debtor's assets are insufficient to meet the expenses of the proceedings.
Is there a requirement to demonstrate centre of main interests (COMI) for a company to file a case in this jurisdiction?	Yes. Non-Saudi entities (whether natural or corporate persons) must hold assets in Saudi Arabia or participate in commercial, professional or other activities (generating profit) through a licensed entity in Saudi Arabia.		

	Protective Composition Plan (PCP)	Financial Restructuring Plan (FRP)	Liquidation Procedure / Administrative Liquidation Procedure (ALP)
Is restructuring of both secured and unsecured claims possible?	Yes.	Yes.	N/A
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	In short, yes. Creditors and shareholders whose legal or contractual rights will be affected by the PCP can vote on the proposal. Creditors are divided into classes for the purposes of voting on the proposal (with each class of similarly situated creditors voting separately on the proposal). Creditors in the same class are treated equally in terms of estimated distributions. The classification of creditors should take into account various criteria prescribed by the Bankruptcy Law (BL), including: ■ each class shall include similar rights holders; and ■ the extent to which the proposal affects (1) the said rights and (2) creditor classification into more than one class. To file for a PCP, the debtor must have already classified its creditors into different categories for the purposes of voting. Once the PCP commences, the court will confirm the creditor classification in accordance with standards of fairness, and may request the debtor to re-classify the creditors to ensure the fairness criteria are met.	In short, yes. The same criteria on creditor classification in the previous column apply. The debtor prepares the proposal, with the assistance and supervision of the trustee, after the FRP commences. The proposal will need to address creditor classification in accordance with the standards of fairness, meeting the criteria prescribed in the Bankruptcy Law (BL).	The statutory priority of debt waterfall will apply in a liquidation procedure. The BL provides that the procedure expenses take priority over debts and are deducted from any liquidation proceeds before distribution. Residual proceeds are to be paid out in the following order of priority: (a) debt secured on particular asset(s) (with any shortfall treated as unsecured debts); (b) secured financing debt; (c) 30 days' salary for the relevant debtor's employees; (d) family payments prescribed by statute or court order; (e) expenses to allow for the continuation of the relevant debtor's activities during an insolvency proceeding; (f) previous salary entitlements of the relevant debtor's employees; (g) unsecured debts; and (h) unsecured government fees, subscriptions and taxes. (Article 196 of BL)
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	Strictly speaking, there is no express requirement to seek shareholder approval prior to commencing a PCP under the BL. Shareholder approval prior to commencing a PCP is required insofar as the constitutional documents of the debtor require shareholder approval. Voting quorums will be those quorums set out under the articles of association of the debtor in the absence of any legal provision otherwise. From a BL perspective, only shareholders whose legal or contractual rights will be affected by the PCP can vote on the proposal. Although the BL requires that impacted shareholders and creditors must vote on the proposal post-commencement (i.e., under the auspices of a court-administered PCP), there is nothing in the law that precludes shareholders from voting on the proposal prior to the commencement of the PCP if the debtor and its board/managers prefer a prior shareholder approval. Notwithstanding the above, in practice, we would advise a debtor to obtain its shareholders' approval given that shareholders will most likely be affected by any BL procedure.		There is no express requirement under the BL to seek shareholder approval prior to commencing a Liquidation procedure or an ALP. Notwithstanding this, in practice, we would advise our clients to obtain their shareholders' approval given that shareholders will most likely be affected by any BL procedure. Moreover, a shareholders' resolution is required in order to dissolve the debtor under the Saudi Companies Law. The BL does impose obligations on the board/managers and shareholders of a debtor to liquidate the debtor if the debtor has no prospect of avoiding liquidation.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes. The voting requirements relating to the proposal prevent holdouts from dissenting/rogue creditors. Upon ratification, the plan binds the debtor, its shareholders and all its creditors (whether or not they voted in favor of the same).		Yes.

	Protective Composition Plan (PCP)	Financial Restructuring Plan (FRP)	Liquidation Procedure / Administrative Liquidation Procedure (ALP)
Commencing the process			
Who can commence?	The debtor.	The debtor, creditor(s) or the debtor's regulator (if the debtor is a regulated entity).	Liquidation Procedure The debtor, creditor(s) or the debtor's regulator (if the debtor is a regulated entity). If a creditor wants to commence a Liquidation procedure, there is a total debt exposure requirement of at least SAR 50,000. Furthermore, if the procedure is commenced by a creditor, the creditor must prove that it has requested overdue payments be made at least 28 days prior to the date of the application for commencement of a Liquidation procedure (Article 93 of BL). ALP The debtor or its regulator (if the debtor is a regulated entity).
Is shareholder's consent required to commence proceeding?	Please see the responses above.	Please see the responses above.	Please see the responses above.
Is there an ability to consolidate group estates?	No.	No. However, if an asset is jointly owned by the debtor and any other third party (whether or not that third party is part of the debtor's group), the court may — by way of a court order — subject the said asset to an FRP, insofar as the rights of the debtor's creditors and the creditors of the third party are protected. Furthermore, the court may by way of a court order subject a third party to an FRP if this involvement is in the interests of the debtor (and if separate procedures will be unduly costly/ unfeasible), and provided — at all times — that the rights of the debtor's creditors and the creditors of the third party are protected.	No.

	Protective Composition Plan (PCP)	Financial Restructuring Plan (FRP)	Liquidation Procedure / Administrative Liquidation Procedure (ALP)
Is there any court involvement?	Yes, there is court supervision but minimal court intervention. The court issues the necessary judgments and decisions to implement the PCP, oversees the implementation and hears all disputes arising therefrom. The court imposes any penalties and sanctions provided for in the BL (Article 2 of BL). The court may also intervene in the early stages of the procedure by introducing precautionary (interim) measures, e.g., attaching the assets of the debtor that are in possession of the debtor/third parties (Article 5 of IR). However, given the relative novelty of the law and the relatively limited number of PCP cases, it is hard to predict how the court will exercise its discretion in determining what would constitute the "interest of the majority of the creditors" and what would constitute the interest of the "bankruptcy estate," in the absence of any criteria or test in the BL in respect of the same.	Yes, there is court supervision and a court-appointed trustee leads the process. The court issues the necessary judgments and decisions to implement the FRP, oversees the implementation and hears all disputes arising therefrom. The court imposes any penalties and sanctions provided for in the BL (Article 2 of BL). The court may also intervene in the early stages of the procedure by introducing precautionary (interim) measures, e.g., attaching the assets of the debtor that are in possession of the debtor/third parties (Article 5 of IR). However, given the relative novelty of the law and the relatively limited number of FRP cases, it is hard to predict how the court will exercise its discretion in determining what would constitute the "interest of the majority of the creditors" and what would constitute the interest of the "bankruptcy estate," in the absence of any criteria or test in the BL in respect of the same.	Liquidation Procedure Yes, but there is limited court involvement, as the court-appointed trustee is appointed to act impartially in adjudicating claims, selling bankruptcy assets and making distributions. However, please note that a trustee can only sell bankruptcy assets that are subject to disputed creditor claims with the court's approval. The court issues the necessary judgments and decisions to implement the Liquidation procedure, oversees the implementation and hears all disputes arising therefrom. The court imposes any penalties and sanctions provided for in the BL (Article 2 of BL). The court may also intervene in the early stages of the procedure by introducing precautionary (interim) measures, e.g., attaching the assets of the debtor that are in possession of the debtor/third parties (Article 5 of IR). However, given the relative novelty of the law and the relatively limited number of Liquidation procedure cases, it is hard to predict how the court will exercise its discretion in determining what would constitute the "interest of the majority of the creditors" and what would constitute the interest of the "bankruptcy estate," in the absence of any criteria or test in the BL in respect of the same. ALP As with the liquidation procedure, there is limited court involvement with an ALP. In the case of an ALP, the Bankruptcy Committee, under the umbrella of the Ministry of Commerce, will lead the ALP. The requirements, procedures and timelines of an ALP are almost identical to the Liquidation procedure. The main difference between the two procedures are as follows: ■ The Bankruptcy Committee is tasked to oversee and manage an ALP (rather than a trustee). ■ When an ALP commences, the creditors are required to submit their claims within a shortened 60-day period from the date they were notified of the commencement date. ■ The Bankruptcy Committee only has 12 months within which to sell the bankruptcy assets, distribute the sale proceeds and conclude the proceedings. The 12-month timeframe may only be extended by an additional 90 days (at most).

	Protective Composition Plan (PCP)	Financial Restructuring Plan (FRP)	Liquidation Procedure / Administrative Liquidation Procedure (ALP)
Who manages the debtor?	The debtor continues to manage its business.	The debtor continues to manage its business under the trustee's supervision (Articles 57, 58(1), 69 and 70 of BL).	Liquidation Procedure The debtor ceases to manage its activities immediately upon the commencement of the procedure and the trustee's appointment (Article 100 (1) of BL). The trustee manages the debtor throughout the procedure. ALP The debtor ceases to manage its activities immediately upon the commencement of the procedure. The Bankruptcy Commission leads the procedure and manages the debtor throughout.
What is the level of disclosure of process to voting creditors?	The BLs Implementing Regulations as well as the Bankruptcy Commission's Rules Governing Bankruptcy Procedures, require a high level of disclosure in terms of documents and information that the debtor needs to disclose in its proposal, for the creditors to review and assess when voting on the proposal.		Liquidation Procedure The creditors in a liquidation procedure vote on the feasibility of purchase offers relating to the sale of an asset with a value that exceeds one-quarter of the total value of all the bankruptcy assets. There are other circumstances outlined in the BL that may (at the discretion of the trustee or the court) require a vote from the creditors (e.g., multiple purchases offers, deferring a sale of an asset, settlements between the debtor and third parties, initiating cases against third parties, etc). ALP No creditor voting takes place with an ALP.
What entities are excluded from customary insolvency or reorganization proceedings, and what legislation applies to them?	The BL only applies to the following: ■ A natural person practicing a commercial or professional activity (or any other activity generating profit) in Saudi Arabia ■ A commercial or professional corporate person or organization registered in Saudi Arabia holding assets or practicing a commercial or professional activity (or any other activity generating profit) ■ Non-Saudi investors, whether natural or corporate persons, holding assets or practicing a commercial or professional activity (or any other activity generating profit) through a licensed entity in Saudi Arabia. Note: The BL only applies to non-Saudi investor assets located in Saudi Arabia. All other entities are excluded from the BL.		

	Protective Composition Plan (PCP)	Financial Restructuring Plan (FRP)	Liquidation Procedure / Administrative Liquidation Procedure (ALP)
How long does it generally take for a creditor to commence the procedure?	Not applicable. PCPs are only commenced by debtors.	Once a creditor applies to commence an FRP, the court will register the creditor's application and set a hearing date that must fall within 40 days from the date of registering the application to commence proceedings; the 40-day period may be adjourned by an additional 21 days, at the court's discretion. The court must notify the creditor and the debtor separately of the hearing date five days after the application has been registered; the debtor or creditor may object to the application under certain circumstances (e.g., the debtor may object on the basis that the debt is disputed or the applicant is abusing the procedure). If the debtor fails to attend the hearing, the court shall notify the debtor of its decision to accept or reject the application five days after the issuance of the decision. The court then issues an order to commence proceedings and to appoint a trustee to lead the FRP and supervise the debtor's business meanwhile.	Liquidation Procedure The timeframe for the commencement of a liquidation procedure is not prescribed in the BL and will largely depend on the status of the debtor, the extent of the debt involved and the ongoing business and commitments of the debtor. ALP Not applicable. ALPs are only commenced by debtors or their regulatory authorities.
Effect of process			
Does debtor remain in possession with continuation of incumbent management control?	Yes, the debtor remains in possession and manages its business throughout the PCP.	Yes, the debtor continues to manage its business throughout the FRP, but under the supervision of the trustee.	Liquidation Procedure The trustee shall replace the debtor in the management of its activities. However, the trustee is not liable vis-à-vis third parties for any actions taken in this capacity. ALP The Bankruptcy Commission shall replace the debtor in the management of its activities. However, the Bankruptcy Commission is not liable vis-à-vis third parties for any actions taken in this capacity.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	When applying for commencement of a PCP, the debtor may apply for a discretionary moratorium against further claims and security enforcement, which moratorium period may not exceed 180 days. The court may approve certain enforcement actions during the moratorium. Yes, the moratorium is worldwide.	Under an FRP, a moratorium is automatic upon the application to commence an FRP and remains in place for a period of 180 days. The court may, either at its discretion or upon the request of the trustee or the debtor, extend the 180-day moratorium period by no more than an additional 180 days. The moratorium is lifted if the application for proceedings is rejected when the court ratifies the restructuring proposal or upon the termination of the proceedings. The court may approve certain enforcement actions during the moratorium. Yes, the moratorium is worldwide.	Under a liquidation procedure/ALP, the moratorium is automatic upon application to commence a liquidation procedure, and remains in place for the duration of the proceedings. The moratorium is lifted if the application for proceedings is rejected or upon the termination of the proceedings. Under a liquidation procedure (only), the court may approve certain enforcement actions during the moratorium. Yes, the moratorium is worldwide.

	Protective Composition Plan (PCP)	Financial Restructuring Plan (FRP)	Liquidation Procedure / Administrative Liquidation Procedure (ALP)
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	In respect of a PCP, although no court approval is required for unsecured DIP financing, secured DIP financing is subject to court approval (i.e., the court may approve secured DIP financing if it is seen to be required for the business to operate and/or for the preservation of the bankruptcy estate). In terms of priority, DIP financing may either take priority over existing unsecured debt or may be secured by the same asset securing another debt if (i) the existing secured creditor consents or (ii) the court determines that the existing secured creditor will not be negatively impacted by putting in place an equal or higher ranking security over the same asset. Furthermore, Article 78 of IR specifies the following order of priority: (a) procedure expenses and fees (including trustee and expert fees); (b) new financing obtained during the PCP; and (c) expenses necessary to maintain the debtor's activities during the course of the PCP (i.e., operational fees).		Liquidation Procedure The BL provides a framework for DIP financing with super-priority ranking (while simultaneously ensuring that existing secured creditors are adequately protected). Court approval is required for any DIP financing (whether secured or unsecured) during a liquidation procedure. ALP Not applicable.
Can procedure be used to implement debt-to-equity swap?	Yes. The details of any proposed settlement including D/E swaps is one of the documentation requirements for a Proposal (Article 16 (I)).		A creditor can put forward an offer to purchase the bankruptcy assets of the debtor. We see no reason why this cannot be done through a classic D/E swap.
Are third-party releases available?	Yes, consensual third-party releases are, theoretically speaking, available. The Proposal is negotiated contractually between the creditors and the debtor and the creditors may in-principle **consent** to third-party releases. Third-party releases are a fairness point ultimately and would be a matter which, in our view, the court is ceded involvement with insofar as any such releases are deemed unfair.	Same response as previous column in relation to consensual third-party releases. Furthermore, on non-consensual third-party releases: Article 67 of the BL provides that any third party whose assets are in the possession of the debtor (or attached by the debtor) may file a request (supported with relevant title documents) with the court to recover those assets. The trustee also has the right to express an opinion to the court on this matter.	No consensual third-party releases are available. Furthermore, on non-consensual third party releases: Article 67 of the BL provides that any third party whose assets are in the debtor's possession (or attached by the debtor) may file a request (supported with relevant title documents) with the court to recover those assets. The trustee also has the right to express an opinion to the court on this matter.
Are the proceedings recognized abroad?	Yes, insofar as the applicable conflict of laws principles/treaties with the foreign jurisdiction apply.		
Has the UNCITRAL Model Law been adopted?	According to Article 97 of the IR, the Minister of Commerce (in coordination with the Minister of Justice) will issue regulations pertaining to cross-border bankruptcy procedures. No regulations have been passed yet.		
Can a debtor continue to carry on business during insolvency proceedings?	Yes.	Yes.	Unlike the PCP or the FRP, which are not compulsory procedures by nature, the debtor is likely to be under a legal obligation to cease doing business if insolvency is inevitable. In theory, the continuation of business under circumstances where the business is in actual distress and is no longer viable triggers bankruptcy-related penalties on the directors and, potentially, the debtor's shareholders. Given the novelty of the BL, we have not seen many actual cases where directors or shareholders have effectively been held liable for failure to file for a liquidation procedure/ALP when the circumstances warrant it. However, if the debtor continues to operate under the distressed circumstances, the risk of penalties cannot be excluded.

	Protective Composition Plan (PCP)	Financial Restructuring Plan (FRP)	Liquidation Procedure / Administrative Liquidation Procedure (ALP)
Other factors			
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	The board/managers and shareholders of the debtor must act prudently before concluding certain types of transactions that may be "clawed back" if they are deemed detrimental to the interests of one or more creditors or concluded in bad faith, noting that some transactions may even give rise to a potential risk of criminal liability. The BL provides that, among other things, security may not be enforced without the permission of the court; an interested or connected party may apply to overturn transactions undertaken by the debtor up to 12 months (for transactions with non-related third parties) or up to 24 months (for transactions with related parties) before the commencement of proceedings under the BL, and in relation to the following: (i) disposal of any rights, assets or security (wholly or partially); (ii) transfer or sale of assets at below fair value; (iii) early or unfair settlement of debts; (iv) giving security for debts before becoming liable for such debts; and (v) waiving or absolving a debt owed to the debtor (wholly or partially). The court could reverse the relevant action unless the action was: (i) in the interest of the debtor; and (ii) the debtor was not cash flow or balance sheet insolvent at the time. The court may (subject to the rights of third parties in good faith) require assets to be restored, revoke any security given and/or reinstate any security given by a security provider whose liability has been wholly or partly reduced. Such provisions appear to create "hardening periods" during which the provision of a security interest may be vulnerable to being unwound. A debtor and its shareholders, managers/directors and officers may be found in violation of the BL and be subject to an imprisonment of up to five years and/or a fine of up to SAR 5 million if they commit any of the following actions prior to or during any of the procedures under the law: (a) misusing or seizing the debtor's assets or abusing their power or authority (i.e., acting ultra vires); (b) engaging in the debtor's activities for the purpose of defrauding its creditors; (c) maintaining the debtor's activities with no possibility of avoiding liquidation; (d) adopting or engaging in arbitrary or negligent methods to avoid or delay the commencement of a liquidation procedure, thus prejudicing the rights of creditors (including through the sale of goods at rates below fair market value to generate cash); (e) executing transactions for free or for unfair consideration; (f) paying the debts of any creditors in a manner that prejudices the rights of other creditors; or (g) abusing any of the procedures set out in the BL.		
What is the order of priority of claims?	There is no detailed statutory guidance on priority of claims in respect of PCPs. The waterfall framework would need to be agreed upon either through a contractual (legal) framework or through a business plan framework and taking into account (in all circumstances) the client liabilities (which differ on a case-by-case basis for each distressed debtor). The waterfall framework can be guided by the statutory waterfall framework (which only applies in a liquidation scenario).		The BL provides that the procedure expenses take priority over debts and are deducted from any liquidation proceeds before distribution. Residual proceeds are to be paid out in the following order of priority: (a) debt secured on particular asset(s) (with any shortfall treated as unsecured debts); (b) secured financing debt; (c) 30 days' salary for the relevant debtor's employees; (d) family payments prescribed by statute or court order; (e) expenses to allow for the continuation of the relevant debtor's activities during an insolvency proceeding; (f) previous salary entitlements of the relevant debtor's employees; (g) unsecured debts; and (h) unsecured government fees, subscriptions and taxes. (Article 196 of BL)
Do pension liabilities have any priority over other unsecured claims?	No. The public pension agency, General Organization for Social Insurance (GOSI), manages the pension funds for individual employees. However, salary entitlements (which would cover leave indemnities) take priority over unsecured claims.		
Is it possible to challenge prior transactions?	Yes. The BL provides, among other things, that an interested or connected party may apply to overturn transactions undertaken by the debtor up to 12 months (for transactions with non-related third parties) or up to 24 months (for transactions with related parties) before the commencement of proceedings under the BL, and in relation to the following: (i) disposal of any rights, assets or security (wholly or partially); (ii) transfer or sale of assets at below fair value; (iii) early or unfair settlement of debts; (iv) giving security for debts before becoming liable for such debts; and (v) waiving or absolving a debt owed to the debtor (wholly or partially). The court could reverse the relevant action unless the action was: (i) in the interest of the debtor; and (ii) the debtor was not cash flow or balance sheet insolvent at the time. The court may (subject to the rights of third parties in good faith) require assets to be restored, revoke any security given and/or reinstate any security given by a security provider whose liability has been wholly or partly reduced. Such provisions appear to create "hardening periods" during which the provision of a security interest may be vulnerable to being unwound.		

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	Winding up	Judicial management	Scheme of arrangement
Initial considerations			
Can you take security over all types of assets, including accounts receivable?	Yes, creditors can take security over all types of assets including accounts receivable (for example, via a floating charge).	Yes, creditors can take security over all types of assets including accounts receivable (for example, via a floating charge).	Yes, creditors can take security over all types of assets including accounts receivable (for example, via a floating charge).
What is the nature of the insolvency 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 of the following: ■ A member's voluntary winding-up subject to there being a declaration of solvency by the directors of the company ■ A creditor's voluntary winding-up where the directors have lodged a declaration that the company cannot continue its business by reason of its liabilities. The key difference between a member's voluntary winding-up and a creditor's voluntary winding-up is that the company gets to appoint the liquidator in the former. In the alternative, an application can be made to court for the mandatory winding-up for the company. The difference between the voluntary and court-mandated process is the method by which the winding-up is initiated. A company resolution is required in a voluntary winding-up but not in a winding-up by the court.	The judicial management procedure is based on the English administration process and is supervised by an external judicial manager who takes control of the company and its assets. It seeks to achieve any of the following: ■ The survival of the company, or the whole or part of its undertaking, as a going concern ■ The approval of a compromise or arrangement between the company and its creditors ■ A more advantageous realization of the company's assets or property than on a winding-up ■ (collectively, the "**Purposes**") There are two ways in which a company can be placed under judicial management, namely: (i) by an application to the court; or (ii) by a resolution passed by a majority in number and value of creditors present and voting. Depending on the process, a judicial manager may be appointed by the court, or by a majority in number and value of creditors at the meeting to place the company under judicial management. Once a company enters into judicial management, the judicial manager takes into custody and controls all of the property to which the company is entitled. During this period, all powers conferred and duties imposed on the directors must be exercised and performed by the judicial manager and not by the directors of the company.	A scheme of arrangement allows the company to vary or modify its obligations in relation to its debts and liabilities owed to its creditors.

	Winding up	Judicial management	Scheme of arrangement
What is the solvency requirement for a company to file a case in this jurisdiction?	**Members' voluntary winding-up (for solvent liquidation)** The directors of the company are required to make a declaration of solvency prior to the meeting where the resolution for winding-up is proposed, and the declaration must indicate that the directors, or the majority of them, have: ■ Made an inquiry into the affairs of the company ■ 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. ■ The declaration of solvency loses its effect if: ■ It was not made at a meeting of directors. ■ It was not made within five weeks immediately before the passing of the resolution for voluntary winding-up. **Creditors' voluntary winding-up** A creditor's voluntary winding-up may be commenced once the directors of the company have lodged a declaration stating the following: ■ That the company cannot by reason of its liabilities continues its business ■ That meetings of the company and of its creditors have been summoned for a date within 30 days after the date of the declaration Following which, the directors must immediately proceed to appoint a licensed insolvency practitioner to be the provisional liquidator. **Winding-up by the court** The court may order the winding-up if the company is unable to pay its debts. There are two ways in which an applicant can establish that the company is unable to pay its debts: ■ Adducing evidence of the company's actual inability to pay its debts ■ Adducing evidence of a deemed inability to pay its debts	As set out above, the company may be placed under judicial management only where: ■ The company is or is likely to become unable to pay its debt. ■ There is a reasonable probability of achieving one of the aforementioned Purposes. There are two ways in which a company can be said to be unable to pay its debts, and these are as follows: ■ By adducing evidence of the company's actual inability to pay its debts ■ By adducing evidence of a deemed inability to pay its debts Regarding the former, the applicant need only show that the company's current liabilities exceed its current assets such that it is unable to meet all debts as and when they fall due. As for the latter, a company is deemed to be unable to pay its debts if: ■ a creditor to whom the company is indebted in a sum exceeding SGD 15,000, ■ serves a written demand at the registered office of the company, requiring the company to pay the sum due, and ■ the company has for three weeks after the service of the demand, neglected to pay the sum or to secure or compound it to the reasonable satisfaction of the creditor.	No solvency requirement.

	Winding up	Judicial management	Scheme of arrangement
	Regarding the former, the applicant need only show that the company's current liabilities exceed its current assets such that it is unable to meet all debts as and when they fall due. As for the latter, a company is deemed to be unable to pay its debts if: ■ a creditor to whom the company is indebted in a sum exceeding SGD 15,000, ■ serves a written demand at the registered office of the company, requiring the company to pay the sum due, and ■ the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound it to the reasonable satisfaction of the creditor.		
Is there a requirement to demonstrate centre of main interests (COMI) for a company to file a case in this jurisdiction?	The Singapore courts may wind up a foreign company that has a "substantial connection" with Singapore. In determining whether a foreign company has a substantial connection with Singapore, the Singapore courts may have regard to one or more of the following factors, including the COMI of the company: ■ The company is carrying on business in Singapore or has a place of business in Singapore. ■ The company is registered under Division 2 of Part XI of the Companies Act. ■ The company has substantial assets in Singapore. ■ The company has chosen Singapore as the law governing a loan or other transaction, or the law governing the resolution of one or more disputes arising out of or in connection with a loan or other transaction. ■ The company has submitted to the jurisdiction of the court for the resolution of one or more disputes relating to a loan or other transaction.	The Singapore courts may place a foreign company into judicial management if it has a "substantial connection" with Singapore. In determining whether a foreign company has a substantial connection with Singapore, the Singapore courts may have regard to one or more of the following factors, including the COMI of the company: ■ The company is carrying on business in Singapore or has a place of business in Singapore. ■ The company is registered under Division 2 of Part XI of the Companies Act. ■ The company has substantial assets in Singapore. ■ The company has chosen Singapore as the law governing a loan or other transaction, or the law governing the resolution of one or more disputes arising out of or in connection with a loan or other transaction. ■ The company has submitted to the jurisdiction of the court for the resolution of one or more disputes relating to a loan or other transaction.	A foreign company would be able to commence a scheme of arrangement process if it has a "substantial connection" with Singapore. In determining whether a foreign company has a substantial connection with Singapore, the Singapore courts may have regard to one or more of the following factors, including the COMI of the company: ■ The company is carrying on business in Singapore or has a place of business in Singapore. ■ The company is registered under Division 2 of Part XI of the Companies Act. ■ The company has substantial assets in Singapore. ■ The company has chosen Singapore as the law governing a loan or other transaction, or the law governing the resolution of one or more disputes arising out of or in connection with a loan or other transaction. ■ The company has submitted to the jurisdiction of the court for the resolution of one or more disputes relating to a loan or other transaction.

	Winding up	Judicial management	Scheme of arrangement
Is restructuring of both secured and unsecured claims possible?	The rights of secured creditors to deal or realize security over company assets (with the exception of floating charges) are not affected by the winding-up order. Secured creditors (save for those with floating charges over the company's assets) may proceed to realize their security to recover the monies owed to them. The proceeds from the realization of the company assets (including assets under a floating charge) will be used to pay preferential creditors in priority to all other unsecured debts. If the security realized is inadequate to cover the liability of the company to the secured creditor, the secured creditor may seek to recover the balance as an unsecured creditor.	Yes, in specific instances. **Floating charge** 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 security. Where such property is so disposed of, the holder of the floating charge has the same 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 floating charge. In light of the potential prejudice that may be caused to floating charge holders, the IRDA provides that the court must dismiss an application for a judicial management order if it is opposed by a floating charge holder, and the court is satisfied that the prejudice that would be caused to the floating charge holder is disproportionately greater than the prejudice that would be caused to unsecured creditors of the company if the application is dismissed. **Other forms of 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 possession of the company under a hire purchase agreement, chattel leasing agreement or retention of title agreement, would be likely to promote one of the aforementioned Purposes, 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 potentially be on terms that may have an impact on existing security over assets.

	Winding up	Judicial management	Scheme of arrangement
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	N/A	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 may have to be separated into different classes for the purposes of voting. The Singapore Court of Appeal decision of *Pathfinder Strategic Credit LP v Empire Capital Resources Pte Ltd* [2019] 2 SLR 77 sets out three broad considerations for creditor classification: ■ The identification of a comparator i.e., the most likely scenario in the absence of scheme approval ■ An assessment of the relative positions of creditors under the scheme and whether this mirrors their relative positions in the comparator ■ If there is a difference in the step immediately above, to ascertain whether the extent of the difference is such as to render the creditors' rights "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. A separate meeting should be held for each disparate class of creditors. 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. 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.

	Winding up	Judicial management	Scheme of arrangement
Is shareholder approval needed to commence a case?Are shareholders entitled to vote on a plan?	Yes, in the case of members' 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. 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 an inspection committee that represents the creditors.	Yes, an ordinary resolution is required (unless otherwise provided in the company's constitution) if the judicial management application is brought by the company. The statement of proposals put forth by the judicial manager will ultimately be voted upon and is contingent on the approval of creditors.	Approval of the company is required in bringing the scheme application. The proposed compromise or arrangement will not be binding unless it is approved by the statutorily required majority of creditors, members or the holders (or class of holders) of units of shares. The statutory majority required is a majority in number representing three-fourths in value of the creditors, members, or holders of units of shares present and voting either in person or by proxy ("Requisite Threshold"). **Pre-packaged restructuring** On application by the company, a compromise or arrangement may be approved even though no meeting of the creditors or class of creditors has been held if the court is satisfied, among other things, that the Requisite Threshold would have been obtained had a meeting of the relevant creditors or class of creditors been called.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	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. Any arrangement entered into between a company about to be or in the course of being wound up and its creditors is, subject to the right of appeal, binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by 75% in value and 50% in number of the creditors.	Yes. The statement of proposals put forth by the judicial manager, once approved by a majority of the 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, will be bound by the compromise or arrangement, including members or creditors opposed to it, provided that the Requisite Threshold is met. The court may also cram down on a dissenting class 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 a majority in number representing at least three-fourths in value of all the creditors present and voting at the scheme meeting (regardless of classification), the court is satisfied that the scheme does not discriminate unfairly between two or more classes of creditors, and it is fair and equitable to each dissenting class.

	Winding up	Judicial management	Scheme of arrangement
Commencing the process			
Who can commence?	The following parties may make an application for the court to wind up the company ■ The company ■ Any director of the company ■ Any creditor, including a contingent or prospective creditor of the company ■ A contributor ■ The liquidator of the company ■ 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, its directors, or any of its creditor(s).	An application may be made by the company, any creditor, member or holder of units of shares of the company, the judicial manager (if the company has been placed under judicial management), or the liquidator (in the case of a company being wound up).
Is shareholder's consent required to commence proceeding?	No, except in members' and creditors' 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).	As discussed above, a company may be put into judicial management by either (i) an application to the court; or (ii) a resolution of creditors. Once appointed, 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, and 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 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 sanction must be sought to implement the compromise or arrangement. Pre-packaged restructuring While the court must ordinarily grant approval to hold the meeting, a compromise or arrangement may be approved even though no meeting of the creditors or class of creditors has been held, if the court is satisfied, among other things, that the Requisite Threshold would have been obtained had a meeting of the relevant creditors or class of creditors been called.

	Winding up	Judicial management	Scheme of arrangement
Who manages the debtor?	The liquidator. When making a winding-up application, the applicant must nominate, in writing, a licensed insolvency practitioner to be appointed as liquidator. The applicant may only nominate the Official Receiver to be appointed as liquidator subject to these conditions: ■ The applicant has taken reasonable steps, but is unable, to obtain the consent of a licensed insolvency practitioner to be appointed as liquidator. ■ The Official Receiver consents to being nominated to be appointed as liquidator. In a voluntary winding-up, the liquidator (who must be a licensed insolvency practitioner) is appointed by the members or creditors (depending on whether it is a members' or creditors' winding-up).	The judicial manager. When an applicant seeks to put the company into judicial management by making an application to court, the applicant must nominate a person who is a licensed insolvency practitioner to act as a judicial manager. Notwithstanding: ■ A majority in number and value of creditors may oppose the nomination made by the company, and the court may invite the creditors to nominate another person if it is satisfied as to the number and value of the creditors' claims and as to the grounds of their opposition. ■ The Minister may nominate a person (who need not be a licensed insolvency practitioner) if the Minister considers that public interest so requires. ■ The court may reject the nomination of the applicant and appoint another person instead. If the judicial management is intended to be by way of a creditors' resolution, the company may appoint an interim judicial manager (subject to the fulfilment of certain conditions), but it is ultimately the creditors who get to decide the person (who must be a licensed insolvency practitioner) that is appointed as the judicial manager.	The parties proposing the scheme, or the company, will typically appoint a scheme manager to facilitate the process and the subsequent implementation of the scheme. The court may also appoint a scheme manager.
What is level of disclosure of process to voting creditors?	In the event of a creditors' voluntary winding-up, a meeting of creditors must be convened following the meeting of the company, and the company must cause notice of the meeting of creditors to be sent simultaneously with the notices of the meeting of the company. The notice must be sent to the creditors at least 10 days before the date of the meeting, and must contain a statement showing the names of all the creditors and the amounts of their claims. Additionally, the notice of the meeting of creditors must be advertised at least seven days before the date of the meeting in the Gazette and in at least one English newspaper. Lastly, the directors of the company must cause a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of the creditors.	**Application** Where judicial management is by way of application to the court, notice of the application must be as follows: ■ Published in the Gazette and in an English local daily newspaper ■ Sent to the Registrar of Companies ■ Given to the company (where a creditor is the applicant) ■ Given to any person who has appointed, or may be entitled to appoint a receiver and manager of the whole (or substantially the whole) of the company's property pursuant to the terms of a floating charge ("**Floating Charge Holders**") **Creditors' resolution** Where judicial management is intended to be by way of a creditors' resolution, the company must give at least seven days' written notice (in the prescribed form) of its intention to appoint an interim judicial manager to the following:	Prior to the meeting to approve the scheme, the company must give notice of the meeting. Every notice summoning the meeting which is sent to a creditor, member or holder of units of shares of the company must be accompanied by a statement explaining the effect of the compromise or arrangement — in particular, stating any material interests of the directors (whether as directors, members, creditors, holder of units of shares of the company or otherwise), and the effect thereon the compromise or arrangement in so far as it is different from the effect on the like interests of other persons ("Statement"). Where notice is given by way of advertisement, either the Statement, or information as to how the Statement may be obtained, must also be provided. Additionally, a company intending to make an application for a moratorium under Section 64 of the Insolvency, Restructuring and Dissolution Act 2018 (IRDA) must file an affidavit evidencing, inter alia, creditor support for the proposed compromise or arrangement, along with an explanation of how such support would be essential for the success of the proposed compromise or arrangement.

Winding up	Judicial management	Scheme of arrangement
	■ The proposed interim judicial manager ■ The Floating Charge Holders ■ Upon the appointment of the interim judicial manager, the company must: ■ Lodge a written notice of the interim judicial manager's appointment (in the prescribed form) with the Official Receiver and the Registrar of Companies within three days. ■ Thereafter publish a notice of the judicial manager's appointment in the Gazette and in an English local daily newspaper within seven days. As for the creditors' meeting, which must be subsequently convened, the company must: ■ Give the creditors at least 14 days' written notice of the meeting, together with the following: - A statement showing the names of all creditors and the amounts of their claims - A full statement of the company's affairs showing in respect of the company's assets or property, and the method and manner in which the valuation of assets or property was arrived at ■ Cause notice of the meeting of creditors to be published at least 10 days before the date of the meeting in an English local daily newspaper At least one of the directors of the company (as appointed among themselves) and the secretary of the company must also attend the creditors' meeting, and disclose the company's affairs and the circumstances leading up to the proposed judicial management. **Period in which the company is in judicial management** Where a judicial manager (or interim judicial manager) has been appointed: ■ every invoice, order for goods, business letter, order form or other correspondence that is issued by the company or the judicial manager, and ■ every website of the company must state that the affairs, business and property of the company are being managed by the judicial manager.	A brief description containing sufficient particulars of the intended compromise must be provided where the company has not proposed the compromise or arrangement. Further to the above, the company must also do the following: ■ Publish a notice of the application in the Gazette and in at least one English local daily newspaper. ■ Send a copy of the notice published in the Gazette to the Registrar of Companies. Unless the court orders otherwise, the company must also send a notice of the application to each creditor meant to be bound by the proposed compromise or arrangement and who is known to the company.

	Winding up	Judicial management	Scheme of arrangement
		Once a company has been placed in judicial management, the company must, thereafter, submit a statement of affairs to the judicial manager within 28 days (or such a longer period not exceeding two months as the judicial manager may allow). 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 90 days of the judicial management order, the judicial manager must do the following: ■ Send to the Registrar of Companies and to every creditor a statement of the judicial manager's proposals for achieving one or more of the aforementioned purposes ■ Lay a copy of the statement before a meeting of the company's creditors (summoned for the purpose) on not less than 14 days' notice. Additionally, the judicial manager must also send a copy of the statement to every member of the company, or publish a notice in an English local daily newspaper stating an address to which members of the company can write to for copies of the statement to be sent to them free of charge.	
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 any of the following: ■ A company after it has gone into liquidation ■ Banks and finance companies licensed under the Finance Companies Act ■ Insurance companies licensed under the Insurance Act ■ Such class of companies as may be prescribed by the minister in the Gazette. Additionally, a company cannot be placed in judicial management by way of creditors' resolution if a pending judicial management application has not been withdrawn or decided by the court.	Singaporean companies and foreign companies with a "substantial connection" to Singapore may undergo the scheme of arrangement process. However, there are certain classes of companies to which the provisions relating to a scheme of arrangement are inapplicable, such as the following: ■ A company that is a banking corporation ■ A company that is an airport licensee licensed under section 36 of the Civil Aviation Authority of Singapore Act ■ A company that is a finance company licensed under section 6 of the Finance Companies Act ■ A company that is a licensed insurer licensed under section 8 of the Insurance Act ■ A company that is: (a) a financial institution approved under section 28 of the Monetary Authority of Singapore Act; or (b) holds a merchant bank license, or is treated as having been granted a merchant bank license under the Banking 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

	Winding up	Judicial management	Scheme of arrangement
How long does it generally take for 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, assuming the application is not heavily contested.	The duration from the time of the judicial management application to the issuance of a judicial management order is typically three to four months, assuming the application is not heavily contested.	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 the issuance of the order is typically about two months.
Effect of process			
Does debtor remain in possession with 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 company's affairs, business, and property.	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)? Is the stay or moratorium worldwide?	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 winding-up 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, or a written notice of the appointment of an interim judicial manager has been lodged (i.e., commencement of the judicial management process by way of a creditors' resolution), an automatic moratorium period arises, following which: ■ No order may be made, and no resolution may be passed for the winding-up of the company. ■ No steps may be taken to enforce any security over any property of the company. ■ No other proceedings may be commenced or continued against the company. ■ No execution or other legal process may be commenced or continued against the company or its property. The automatic moratorium will continue until either (i) the date on which the judicial management application is decided by the court or, where the company has lodged a written notice of an interim judicial management (ii) the earliest of either the date of appointment of the judicial manager, the date on which the term of appointment of the interim judicial manager ends, or the rejection of the resolution to place the company under judicial management. However, the automatic moratorium does not apply to a company that was subject to an earlier application for a judicial management order, or if there had been an earlier written notice of appointment of an interim judicial manager, within the last 12 months.	There are two types of moratoriums available: under Section 64 of the IRDA and Section 210(10) of the Companies Act. **Section 64 IRDA moratorium** This 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. Upon filing an application for a stay under Section 64 of the IRDA, 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 64(3), (4), (6) of the IRDA. Such requirements include evidence of support from creditors, a 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.

	Winding up	Judicial management	Scheme of arrangement
		On making the judicial management order, the aforementioned moratorium will extend to the end of the judicial management process. The scope of the moratorium will also extend 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.	**Section 210(10) moratorium** Section 210(10) also provides for a more limited form of moratorium that only covers the commencement and continuation of legal proceedings against the company. In most cases, the preference is for the moratorium under Section 64 of the IRDA as the automatic interim moratorium arises upon filing of the court application. However, certain types of companies are excluded from applying for a moratorium under the IRDA, such as financial institutions and other types of prescribed companies prescribed that would have to apply under Section 210 for an interim moratorium. Additionally, the moratorium under the IRDA has more wide-ranging disclosure requirements, both on application and post-application.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	Unlike judicial management and schemes of arrangement, superpriority 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 with subordinate, equal or superior priority regarding 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 with subordinate, equal or superior priority regarding existing security interests, provided that pre-existing security interests are adequately protected. Nonetheless, the court would not make such an order unless it is satisfied that the applicant had undertaken reasonable efforts to explore other types of financing that did not entail such a priority.
Can procedure be used to implement 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.

	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 recognition of Singaporean insolvency proceedings overseas.	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 recognition of Singaporean insolvency proceedings overseas.	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 recognition of Singaporean insolvency proceedings overseas.
Has the UNCITRAL Model Law been adopted?	Yes.	Yes.	Yes.
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 the court winds up a company, the liquidator may carry on the company's business so far as is necessary for the beneficial winding-up of the company for a period of up to four weeks after the making of the winding-up order. Thereafter, the liquidator must obtain authorization from 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 to resuscitate the company or make 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.
Other factors			
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	**Fraudulent trading** A company engages in fraudulent trading where, in the course of the judicial management or winding-up of 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 separately liable to a fine not exceeding SGD 15,000 or to imprisonment for a term not exceeding seven years, or to both.	**Fraudulent trading** A company engages in fraudulent trading where, in the course of the judicial management or winding-up of 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 contributor 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 separately liable to a fine not exceeding SGD 15,000 or to imprisonment for a term not exceeding seven years or to both.	N/A

	Winding up	Judicial management	Scheme of arrangement
	Wrongful trading A company would have traded wrongfully if the company incurs debts or other liabilities: ■ without reasonable prospect of meeting them in full when insolvent, or ■ that it has no reasonable prospect of meeting in full, and which results in the company becoming insolvent. In such circumstances, the court may, if it thinks proper to do so, declare that any person who was a party to the company trading in that manner is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court directs, if that person either: ■ knew that the company was trading wrongfully ■ ought in all the circumstances to have known that the company was trading wrongfully as an officer of the company. Nonetheless, the court may relieve any person from personal liability subject to these conditions: ■ The person acted honestly. ■ Having regard to all the circumstances of the case, the person ought fairly to be relieved from personal liability. Lastly, the company or any interested party may apply to the court for a declaration as to whether a particular course of conduct or transaction would constitute wrongful trading.	**Wrongful trading** A company would have traded wrongfully if the company incurs debts or other liabilities: ■ without reasonable prospect of meeting them in full when insolvent; or ■ that it has no reasonable prospect of meeting in full, and which results in the company becoming insolvent. In such circumstances, the court may, if it thinks proper to do so, declare that any person who was a party to the company trading in that manner is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court directs, if that person either: ■ knew that the company was trading wrongfully ■ ought in all the circumstances to have known that the company was trading wrongfully as an officer of the company. Nonetheless, the court may relieve any person from personal liability subject to these conditions: ■ The person acted honestly. ■ Having regard to all the circumstances of the case, the person ought fairly to be relieved from personal liability. Lastly, the company or any interested party may apply to the court for a declaration as to whether a particular course of conduct or transaction would constitute wrongful trading.	
What is the order of priority of claims?	In the event of a voluntary winding-up, the IRDA provides that, subject to provisions relating to preferential payments, the property of a company must, on its winding-up, be applied pari passu in satisfaction of its liabilities. The preferential debts that are to be paid in priority to all other unsecured debts are set out in the following order: 1. First, the costs and expenses of the winding-up incurred by the Official Receiver as the liquidator of the company, including the costs, expenses and remuneration of any licensed insolvency practitioner appointed by the Official Receiver to act as liquidator in the place of the Official Receiver	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.

2. Second, any other costs and expenses of the winding-up, including the remuneration of the liquidator (apart from any remuneration mentioned in paragraph (a)) and the costs of any audit carried out under section 192 (i.e., regarding the liquidator's accounts);
3. Third, the costs of the applicant for the winding-up order payable under section 127 (i.e., regarding preliminary costs incurred by the applicant in the course of the proceedings)
4. Fourth, 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 any award or agreement regulating conditions of employment of any employee, although the amount payable must not exceed such amount as may be prescribed by the Minister by order in the Gazette
5. Fifth, the amount due to an employee as a retrenchment benefit or ex gratia payment under any contract of employment or any award or agreement that regulates conditions of employment, whether such amount becomes payable before, on or after the commencement of the winding-up, although the amount payable must not exceed such amount as may be prescribed by the Minister by order in the Gazette
6. Sixth, all amounts due in respect of work injury compensation under the Work Injury Compensation Act (Cap. 354) accrued before, on or after the commencement of the winding-up
7. Seventh, all amounts due in respect of contributions payable, during a period of 12 consecutive months commencing not earlier than 12 months before and ending not later than 12 months 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 Income Tax Act (Cap. 134)
8. Eighth, all remuneration payable to any employee in respect of vacation leave or, in the case of the employee' 's death, to any other person in the employee' 's right, accrued in respect of any period before, on or after the commencement of the winding-up, although the amount payable must not exceed such amount as may be prescribed by the Minister by order in the Gazette
9. Ninth, the amount of all tax assessed, and all goods and services tax due, under any written law before the commencement of the winding-up, and all tax assessed under any written law at any time before the time fixed for the proving of debts has expired.

	Winding up	Judicial management	Scheme of arrangement
	Moreover, the debts within each category above rank in the order in which they are specified, although debts of the same class rank equally between themselves and must abate in equal proportions if the property of the company is insufficient to satisfy these debts. Additionally, where the assets of the company are insufficient to meet any preferential debts specified in the above categories (1), (2), (3), (4), (5), (7) and (8): ■ Those debts will take priority over the claims of the holders of debentures under any floating charge created by the company (which charge, as created, was a floating charge). ■ The debts must 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.		
Do pension liabilities have any priority over other unsecured claims?	Insofar as they are provided for under the employee's contract, pension liabilities 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.
Is it possible to challenge prior transactions?	There are specific provisions relating to the avoidance of antecedent transactions under the IRDA as set out below. Nonetheless, the time periods relating to: (i) transactions at an undervalue; (ii) unfair preferences; and (iii) extortionate credit transactions, which will be set out below, are only relevant to the extent that the company is unable/becomes unable to pay its debts in consequence of the transaction or preference. **Undervalue transactions** Where a company is in judicial management or is being wound up, and the company has at the relevant time entered into a transaction with any person at an undervalue, the judicial manager or liquidator may apply to the court for an order to restore the company to the position which it would have been in if it had not entered into the transaction.	There are specific provisions relating to the avoidance of antecedent transactions under the IRDA as set out below. Nonetheless, the time periods relating to: (i) transactions at an undervalue; (ii) unfair preferences; and (iii) extortionate credit transactions, which will be set out below, are only relevant to the extent that the company is unable/becomes unable to pay its debts in consequence of the transaction or preference. **Undervalue transactions** Where a company is in judicial management or is being wound up, and the company has at the relevant time entered into a transaction with any person at an undervalue, the judicial manager or liquidator may apply to the court for an order to restore the company to the position which it would have been in if it had not entered into the transaction.	No.

A company will be regarded as having entered into a transaction with a person at an undervalue in either of these circumstances:

- The company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration.
- The company enters into a transaction with that person for a consideration the value of which is significantly less than the value of the consideration provided by the company (in money or money's worth).

However, the IRDA also specifies that the court must not make an order under this section in respect of a transaction at an undervalue under these circumstances:

- The company entered into the transaction in good faith and for the purpose of carrying on its business.
- At the time the company entered into the transaction, there were reasonable grounds for believing that the transaction would benefit the company.

The period in which an undervalue transaction may be challenged is three years prior to the commencement of the judicial management or winding-up, and ending on the date of the commencement of the judicial management or winding-up.

Unfair preferences

Where a company is in judicial management or is being wound up, and the company has at the relevant time given an unfair preference to any person, the judicial manager or liquidator may apply to the court for an order to restore the position to what it would have been if the company had not given that unfair preference.

An unfair preference occurs where a creditor, surety or guarantor is put in a better position than they would have been in 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 time period here is one year prior to the commencement of the judicial management or winding-up. However, if the unfair preference is given to a person who is connected with the company (otherwise than by reason only of being the company's employee), the relevant period is two years before the commencement of the judicial management or the winding-up.

A company will be regarded as having entered into a transaction with a person at an undervalue in either of these circumstances:

- The company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration.
- The company enters into a transaction with that person for a consideration the value of which is significantly less than the value of the consideration provided by the company (in money or money's worth).

However, the IRDA also specifies that the court must not make an order under this section in respect of a transaction at an undervalue under these circumstances:

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Winding up	Judicial management	Scheme of arrangement
Extortionate credit transactions The judicial manager or liquidator may 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 judicial management or winding-up, if the transaction was extortionate. Transactions are presumed to be "extortionate," unless the contrary can be proved, if having regard to the level of risk accepted by the person providing the credit, the terms of which require grossly exorbitant payments to be made in respect of the provision of the credit, or are harsh and unconscionable or substantially unfair. If the court is of the view 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** A floating charge will be rendered invalid, except to the aggregate of the value of the consideration given in return for the creation of the charge (as consists of money paid, goods or services supplied, or to the discharge or reduction of any debt of the company, and any interest payable thereto), under any of these circumstances: ■ It was created in favor of a person who is connected to the company in the two-year period prior to the commencement of the judicial management or winding-up of the company. ■ It was created in favor of any other person in the one-year period prior to the commencement of the judicial management or winding-up of the company. ■ It is created within the period starting on the commencement of the judicial management of the company.	**Extortionate credit transactions** The judicial manager or liquidator may 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 judicial management or winding-up, if the transaction was extortionate. Transactions are presumed to be "extortionate," unless the contrary can be proved, if having regard to the level of risk accepted by the person providing the credit, the terms of which require grossly exorbitant payments to be made in respect of the provision of the credit, or are harsh and unconscionable or substantially unfair. If the court is of the view 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** A floating charge will be rendered invalid, except to the aggregate of the value of the consideration given in return for the creation of the charge (as consists of money paid, goods or services supplied, or to the discharge or reduction of any debt of the company, and any interest payable thereto), under any of these circumstances: ■ It was created in favor of a person who is connected to the company in the two-year period prior to the commencement of the judicial management or winding-up of the company. ■ It was created in favor of any other person in the one-year period prior to the commencement of the judicial management or winding-up of the company. ■ It is created within the period starting on the commencement of the judicial management of the company.	

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South Africa

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Initial considerations			
Can you take security over all types of assets, including accounts receivable?	Yes. Generally, a creditor is able to take security over all types of assets, including working capital assets and accounts receivable. Security can be taken over both movable and immovable property. Security is most commonly affected over the following: ■ Land and buildings by the registration of a mortgage bond ■ 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. However, this is less commonly used because it requires the creditor to maintain possession of the pledged property for purposes of perfecting the security. There are other specific forms of security for specific assets such as patents and trade markets, shops, aircraft, etc. ■ 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 and financial instruments but exclude trademarks, copyright and patents.		
What is the nature of the insolvency 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, and 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 woundup 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 shareholders through the adoption of a special resolution. The resolution must be filed with the Companies and Intellectual Property Commission (CIPC). The resolution must state whether the winding-up is a members' voluntary winding up or a creditors' voluntary winding up. The following apply in the case of a voluntary winding up by the company:	A compromise 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. Section 155 prescribes a process whereby: ■ All creditors, or a class of creditors, of the company and the CIPC 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).

Business rescue

In order for Business Rescue proceedings to be initiated, either 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 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 a 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 any of the following scenarios:

- The company has passed a special resolution that it will be wound up by the Court.
- The company has applied to the court to have its voluntary winding-up continued by the court.
- The Business Rescue Practitioner has applied for liquidation on the grounds that there is no reasonable prospect of the company being rescued.
- 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.
- 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.
- 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:

- The company has by special resolution, resolved that it be wound up by the court.
- 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, its members have been reduced to below seven.

Compromise (creditors' scheme of arrangement)

- A meeting must be held where all creditors, or each class of creditors affected by the proposal, may vote on the proposal.
- If the proposal is approved by the creditors voting at the creditors' meeting(s), then the company may apply to the court to approve the proposal, thereby making it a court order that will be binding on all of the company's creditors or all members of the relevant class of creditors.

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
		■ Seventy-five percent 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. ■ The company is an external company, the company has been dissolved, or the company has ceased to carry on business in the country in which it has been incorporated. ■ It appears to the court that it is just and equitable that the company be wound 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.	
What is the solvency requirement for a company to file a case in this jurisdiction?	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 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 to below seven. ■ Seventy-five percent 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.

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	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.		Compromise 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. This process 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. However, such rearrangement must be provided for in the business rescue plan and subsequently approved by the majority of 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 having similar rights would be formed, including secured creditors and different classes of unsecured creditors.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	Yes. ■ Payment of the business rescue practitioners' remuneration and all other costs of the business rescue proceedings ■ Pre-commencement secured creditors ■ Any employees' claims for compensation or remuneration, where such claims arise during the business rescue proceedings ■ 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. ■ Unsecured creditors For 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. Meanwhile, a concurrent creditor who would be subordinated in 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.	Yes, in general terms: ■ Secured creditors - who 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. ■ 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: .1. Costs of the liquidation process, salaries and wages owed to employees, taxes and certain statutory obligations .2. Claims secured by a general notarial bond ■ Concurrent creditors - which have claims that are neither secured nor preferent Distributions to shareholders generally rank behind that of creditors.	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. In this scenario, distributions to shareholders generally rank behind creditors' claims. The priority of claims are (in very general terms) as follows: ■ Secured creditors - who 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. ■ 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: .1. Costs of the liquidation process, salaries and wages owed to employees, taxes and certain statutory obligations .2. Claims secured by a general notarial bond ■ Concurrent creditors - which have claims that are neither secured nor preferent. ■ Shareholders

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
	There is a further classification of creditors as "independent creditors," as follows: ■ A creditor of the company: This may include an employee of the company who is owed any remuneration, reimbursement for expenses or other amount of money relating to employment and which became due and payable before the Business Rescue proceedings. ■ Is not related to the company, a director, or the business rescue practitioner		
Is shareholder approval needed to commence a case?	No	This depends on the type of liquidation process being followed. For voluntary liquidation proceedings, a special resolution by shareholders must be passed in order to place the company in liquidation. However, no resolution is required where the company is placed in compulsory liquidation.	Generally, no (except to the extent that shareholders have a claim as creditors of the company).
Are shareholders entitled to vote on a plan?	Yes, especially in circumstances where the business rescue plan would alter the rights associated with the class of securities the shareholder falls within.	No plan in a liquidation needs to be voted on, and as such, only shareholders that are creditors will be afforded an opportunity to prove their claim in the liquidation.	Yes. 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 an ability to bind minority dissenting creditors (i.e., cramdown)?	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 "Compromise."	Yes. The creditors of a company will adopt a proposal, or a class of creditors, if a majority approves it (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), then 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.

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Commencing the process			
Who can commence?	Business rescue can be initiated in one of two ways: ■ 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 ■ 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, 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 is appointed to wind up a company.
Is shareholder's consent required to commence proceeding?	No. However, a shareholder is an "affected person" and therefore may commence business rescue proceedings.	This depends on the type of liquidation process being followed. Where liquidation proceedings are initiated voluntarily by the company, shareholders will have to pass a special resolution to place the company in liquidation.	No
Is there an ability to consolidate group estates?	Generally, no.	Yes, by way of an application to the High Court.[1]	No, voting would need to take place at the level of each company within the group.

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

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
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 which should not have been disposed of.	Yes, if the proposal is approved by the creditors voting at the creditors meeting(s), then 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, having regard tothe following: ■ 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 of the Master of a competent court on suspected contraventions or offenses 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.
Who manages the debtor?	The business rescue practitioner and the board of directors of the company, provided that any action is authorized by the business rescue practitioner. If the board of a company has commenced business rescue proceedings, the company must then (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 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 business rescue practitioner will have the usual fiduciary duties that any other director of the company will have. In addition, the fiduciary duties of the directors of the company in business rescue will persist throughout the business rescue process. The directors will be able to act as such provided that their actions are authorized by 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 do the following: ■ Take possession of the company's assets ■ Realize such assets ■ Apply the proceeds toward the payment of the costs of the liquidation proceedings as well as to the creditors in their order of ranking and to 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 his/her appointment. The liquidator holds a fiduciary responsibility to the company, its members and its creditors, and must therefore act in their collective best interest. Whilst 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, then 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 will 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.

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
What is level of disclosure of 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 and on which plan they will eventually vote. Further to the above, creditors can also establish a creditors' committee to assist the business rescue practitioner.	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 give notice of such liquidation proceedings in the Government Gazette upon receipt of a copy of any winding-up order lodged with himthem. Where there has been a voluntary winding-up of an insolvent company, the company must, within 28 days after 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 to the above, in terms of the Insolvency Act, 1936 ("**Insolvency Act**") the liquidator must, within six months of being appointed, submit to the Master of the court a liquidation and distribution account of the property in the estate available for payment to creditors.	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 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 terms of the proposal in contrast 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, nonprofit, 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 that particular legislation will dictate their winding-up. A trust or a partnership that does not constitute a company for 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 inter alia all natural persons and unincorporated associations. 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 Act, 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 Regulation 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 of such. 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. Further, only a person recommended by the Prudential Authority may be appointed as a bank's liquidator. 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, 2017).		

	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 to 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, 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 creditors to pass a special resolution and then to register the resolution, among other things, with the CIPC 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 company's board of directors or liquidator 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 ten business days).
Effect of process			
Does debtor remain in possession with 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 the business, except insofar as it may be necessary for its beneficial winding up.	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, generally. 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)? Is the stay or moratorium worldwide?	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. 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 do the following: ■ 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. The moratorium generally will not operate worldwide.	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, the following will take place: ■ All civil proceedings by or against the company concerned shall be suspended until the appointment of a liquidator. ■ 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 which 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. These measures will generally not operate worldwide.	The moratorium regime, including its scope and application, is 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. To the extent that a creditor has consented to a standstill or the proposal, it would notionally be treated in the same way as any contractual agreement by foreign courts, depending on the particular jurisdiction. Where an approved proposal containing a moratorium has been sanctioned by a South African court order to "cram down" dissenting creditors, the moratorium would then be recognized only to the extent that South African court orders are recognized in a particular foreign jurisdiction.

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Is there a provision for debtor in possession or rescuer financing or superpriority or priming 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 superpriority 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, superpriority financing may be agreed as part of the proposal to be approved by the creditors.
Can procedure be used to implement debt-to-equity swap?	Yes, as long as it is provided for in the business rescue plan, which 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-to-equity swap may be incorporated into a proposal under section 155 of the 2008 Companies Act, but this may require that additional approvals (including shareholder approvals) 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: ■ There are insufficiently authorized and unissued shares available to implement the compromise to increase the number of authorized shares in the company. ■ The compromise proposes the issuing 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 the 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 preemptive rights held by existing shareholders in relation to any new shares issued by the company.
Are third-party releases available?	Yes, provided this is provided for in the business rescue plan, which the creditors have approved.	No	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 such third party, the company and the requisite majority of creditors.[2]

2 *Ex parte Cyrildene Heights (Pty) Ltd* 1966 (1) SA 307 (W) at 310; Du Preez v Garber: In re Die Boerebank Bpk 1963 (1) SA 806 (W).

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Are the proceedings recognized abroad?	No	This will differ from jurisdiction to jurisdiction.	The procedure relies on an agreement between the company and its creditors, which would be treated in the same way as any contractual agreement by foreign courts. The company may also apply for the proposal adopted by the relevant creditors to be made an order of court. The proposal would then be recognized to the extent that South African court orders are recognized in other jurisdictions.
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 ("**Act**"). The Act provides for a "designation clause," which provides that the Act will only be applicable to countries the Minister of Justice has designated.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 the common law.	
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

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 a 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 exercise care, skill, and diligence to promote the interests of the company and 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?	■ Payment of the business rescue practitioner's remuneration and all other costs of the business rescue proceedings ■ Pre-commencement secured creditors ■ Any employees' claims for compensation or remuneration, where such claims arise during the Business Rescue proceedings ■ 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 no ■ Unsecured creditors	■ Secured creditors - who 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. ■ 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: .1. Costs of the liquidation process, salaries and wages owed to employees, taxes and certain statutory obligations .2. Claims secured by a general notarial bond ■ Concurrent creditors - which have claims that are neither secured nor preferent ■ Distributions to shareholder generally rank behind that of creditors.	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) the following: ■ Secured creditors - who 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 ■ 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: .1. Costs of the liquidation process, salaries and wages owed to employees, taxes and certain statutory obligations .2. Claims are secured by a general notarial bond. ■ Concurrent creditors - which have claims that are neither secured nor preferent. Distributions to shareholders generally rank behind that of creditors.

	Business rescue	Liquidation	Compromise (creditors' scheme of arrangement)
Do pension liabilities have any priority over other unsecured claims?	In a business rescue scenario, the company's obligations in respect of any retirement fund to which it contributes on behalf of employees continue and the company continues to bear liability for noncompliance 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 continue.	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 and would therefore have priority over concurrent unsecured claims. 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 inter alia "voidable transactions," the business rescue practitioner must take any necessary steps 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 the following: ■ 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."

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Spain

Remark: Spain is a member of the European Union. Please refer to the European Union chapter to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. However, the European Restructuring Directive has not been implemented yet. The Spanish government has approved a preliminary Insolvency draft bill that contains the Directive guidelines. The new Insolvency Act is expected to come into force during the first quarter of 2022. In the meantime, the Recast Text of the Insolvency Act approved on 5 May 2020 is in force (TRLC).

	Pre-insolvency proceedings	Insolvency proceedings	Insolvency mediation (Acuerdo Extrajudicial de Pagos)
Initial considerations			
Can you take security over all types of assets, including accounts receivable?	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 accounts receivable could be taken.	It is rare that creditors are granted new security within the insolvency proceedings since these proceedings aim to protect debtor's assets and ensure payment to all creditors to the maximum extent possible. Please note that 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 assets could be taken, including accounts receivable.
What is the nature of the insolvency process?	The process, formerly set out in article 5 bis and currently regulated in article 583 TRLC, 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 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.

	Pre-insolvency proceedings	Insolvency proceedings	Insolvency mediation (Acuerdo Extrajudicial de Pagos)
	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 mediator will summon the creditors to a meeting to discuss the terms of an out-of-court agreement. This process is also used by debtors, natural persons, as a first step to obtain what is commonly named "second chance."
What is the solvency requirement for a company to file a case in this country?	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") for a company to file a case in this country?	Yes, although it is presumed that the center of the company's main interests is at the place of its registered office.	Yes, although it is presumed that the center of the company's main interests is at the place of its registered office	Yes, although it is presumed that the center of the company's main interests is at the place of its registered office
Is restructuring of both secured and unsecured claims possible?	Yes. Secured and unsecured debts may be written down or postponed under the agreement that the creditors may ultimately enter into.	**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.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	Not initially. However, according to the Recast Text of the Insolvency Law, which is still currently in force, some shareholders could be considered persons particularly related to the debtor. In this case, its claims will be classified as subordinated claims and they will not count for the percentage needed to adopt a collective restructuring agreement.	Not for the fact of being claims of creditors or claims of shareholders. **Composition agreement:** There are different classes of claims. Only ordinary and general privilege claims will be able to vote. **Liquidation:** N/A	There is no classification of claims so there is no separation
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	No shareholder approval is required for starting the process. However, shareholders' approvals may be necessary for certain actions included in the restructuring agreement. If the shareholder is considered a person particularly related to the debtor, their claims will not count for the percentage needed to adopt a collective 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). For legal entities, the competent entity to decide on filing the insolvency petition is the board of directors or the directors. However, approval by a shareholder may be necessary for certain actions included in the composition agreement. Claims of shareholders considered particularly related to the debtor shall have no right to join the composition proposal or to vote at the creditors' meeting.	No shareholder vote is required for starting the process. If the shareholders have claims, they are entitled to vote the out-of-court agreement.

	Pre-insolvency proceedings	Insolvency proceedings	Insolvency mediation (Acuerdo Extrajudicial de Pagos)
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes. Regardless of whether or not a notice under current Article 583 is filed, a restructuring agreement executed before any insolvency proceeding begins 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 the creditors may file. The majorities required in order to make the agreement binding on nonsecured 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 a 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. The agreement will bind all unsecured and subordinated creditors if the court approves it. Secured creditors will also be bound if the required majorities are met. **Liquidation:** N/A	Yes. Nonsecured 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.
Commencing the process			
Who can commence?	Debtor	(1) Debtor; (2) any creditor(s); and (3) Insolvency Mediator if the Insolvency Mediation proceedings has failed	Debtor
Is shareholder's consent required to commence proceeding?	No. However, board authorization is required for filing the communication for opening the negotiations.	No, unless the filing for insolvency is made when the insolvency is merely imminent (not current). The competent entity to decide on filing for insolvency petition is the board of directors.	No. However, board authorization is required for filing the communication.
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

	Pre-insolvency proceedings	Insolvency proceedings	Insolvency mediation (Acuerdo Extrajudicial de Pagos)
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. The commercial court competent for a future insolvency proceeding is informed of the beginning of these proceedings. There is no further intervention.
Who manages the debtor?	Debtor management retains its powers. No receivers are appointed.	The commercial court appoints an insolvency receiver 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 occurs when a creditor has filed 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
What is level of disclosure of process to voting creditors?	The filing of any of these proceedings (article 583 TRLC) may be kept confidential, if so requested by the debtor thus the creditors that the debtor does not directly contact 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 reorganisation 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

	Pre-insolvency proceedings	Insolvency proceedings	Insolvency mediation (Acuerdo Extrajudicial de Pagos)
How long does it generally take for a creditor to commence the procedure?	N/A	There is no specific time (the time depends on the Court). Once the creditor has filed the petition, the judge will check its competence and the existence of facts for the instigation of the insolvency petition. Depending on the insolvency-revealing facts provided by the creditor, the judge will declare the procedure opened directly or will give the debtor a five-day period to reject the petition. There will be a hearing	N/A
Effect of process			
Does debtor remain in possession with continuation of incumbent management control?	Yes.	**Voluntary proceedings** (concurso voluntario, i.e., the debtor filed for insolvency): Yes, generally the debtor's management retains 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. A court-appointed receiver replaces the debtor's management. 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
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	Filing what is called "5-bis notice" (currently regulated in article 583 TRLC) 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 old 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.

	Pre-insolvency proceedings	Insolvency proceedings	Insolvency mediation (Acuerdo Extrajudicial de Pagos)
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	Yes. **Priority:** 50% superpriority (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 superpriority.	Yes. **Priority:** 50% superpriority (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 superpriority.	N/A
Can procedure be used to implement 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.
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 recognised abroad?	Yes, in accordance with the European Insolvency Regulation (EIR), the domestically adopted version of UNCITRAL, or other applicable conflicts of laws principles and/or treaties for other countries.	Yes.	
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.
Can a debtor continue to carry on business during insolvency proceedings?	Filing the 5-bis notice does not affect the 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. However, and as it has been previously said, once the liquidation is opened or in mandatory insolvency proceedings, the debtor's management is replaced by court-appointed receivers.	This process does not affect the continuity of business by the debtor.

	Pre-insolvency proceedings	Insolvency proceedings	Insolvency mediation (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.
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): 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 to correspond 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 nonlisted companies, of the share capital, intragroup loans, fines, interest and claims not reported in time that are not reflected in the debtor's accounting or documents	N/A

	Pre-insolvency proceedings	Insolvency proceedings	Insolvency mediation (Acuerdo Extrajudicial de Pagos)
Do pension liabilities have any priority over other unsecured claims?	N/A	Pension liabilities rank above ordinary unsecured claims in any distribution, up to certain caps.	N/A
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

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Sweden

Initial remark: Sweden is a member of the European Union. Please refer to the European Union chapter to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. The European Restructuring Directive has not yet been implemented in Sweden. The government appointed a commission concerning the European Restructuring Directive, which presented its proposal to the government in a report on 3 March 2021, published in a series known as the Swedish Government Official Reports (SOU 2021:12). The report was referred for consideration on 12 March 2021, asking for consultation comments by 4 June 2021, at the latest. The government has not yet submitted any proposal for new legislation for the Riksdag (i.e., the parliament, which is the highest decision-making assembly in Sweden). The proposed new legislation in the report is proposed to enter into force on 1 July 2022, but nothing has yet been decided.

	Bankruptcy process	Company reorganization process
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	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 insolvency 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 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 for a company to file a case in this country?	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 pay its debts as they become due, or such inability will likely exist within a short time. In other words, there must be a lack of liquidity or 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.
Is there a requirement to demonstrate COMI ("centre of main interests") for a company to file a case in this country?	Yes.	Yes.

	Bankruptcy process	Company reorganization process
Is restructuring of both secured and unsecured claims possible?	Yes.	Yes.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	Yes. Creditors have either priority claims or nonpriority claims. Generally, a specific right of priority has precedence over a general right of priority and all priority claims have priority over nonpriority claims, i.e., nonpriority 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 shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	No.	No.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	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 shareholder's consent required to commence proceeding?	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.
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 summoning 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 setting 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 level of disclosure of process to voting creditors?	N/A	N/A

	Bankruptcy process	Company reorganization process
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 whose activities the municipality, county council, municipal council, assembly or church community have 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).
How long does it generally take for a creditor to commence the procedure?	A creditor can apply for the bankruptcy procedure. If a creditor makes the petition, the creditor should then provide information in the petition 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 the debtor consents to the bankruptcy petition of a creditor prior to the hearing, 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 ("meeting for the administration of oaths"). This meeting will be 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.

	Bankruptcy process	Company reorganization process
Effect of process		
Does debtor remain in possession with 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 reorganization, (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)? Is the stay or moratorium worldwide?	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 by 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 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.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	The administrator can choose to take up new debt, which will have a 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 take up new debt if approved by the administrator.
Can procedure be used to implement debt-to-equity swap?	No.	No.
Are third party releases available?	Yes.	Yes.

	Bankruptcy process	Company reorganization process
Are the proceedings recognised abroad?	Yes. Within the EU, according to 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.
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 bankrupt 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.
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 arises 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 arises 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. Unprioritized claims	N/A
Do pension liabilities have any priority over other unsecured claims?	Yes, for pension liabilities that accrue to the employee or their survivor for a maximum of six months before the bankruptcy application and the following six months.	N/A

	Bankruptcy process	Company reorganization process
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 a 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 wholeis 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 a 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.

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Switzerland

	Bankruptcy	Composition proceedings
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	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. Not all-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. Further, no security over movable assets can be created by registration into a public register except 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. A security assignment or pledge of receivables will only comprise receivables that arose before the opening of bankruptcy. Proceeds of receivables arising after the opening of bankruptcy belong to the bankruptcy estate.	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. A security assignment or pledge of receivables will only comprise receivables that arose before granting the moratorium. Proceeds of receivables arising after the opening of bankruptcy belong to the estate.
What is the nature of the insolvency process?	The bankruptcy proceedings lead to the liquidation of the debtor's assets.	A composition moratorium initiates composition proceedings. 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 the 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 the assignment of assets, which is an insolvent liquidation of the debtor.

	Bankruptcy	Composition proceedings
What is the solvency requirement for a company to file a case in this jurisdiction?	The relevant insolvency trigger is overindebtedness (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 interim accounts at going-concern values (if there is still a going-concern scenario). If the interim balance sheet shows an overindebtedness (i.e., its liabilities exceed its assets) or if there is no longer a going-concern scenario, interim accounts must also be prepared at liquidation values. The interim accounts must be audited by the company's auditors or, in case of an opting-out, by a certified auditor. If the interim balance sheet at liquidation values (also) shows that the company is over-indebted, 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 overindebtedness 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. Whereas it is not settled in the Swiss case law as to how long such a period is supposed to be, the forthcoming new corporate law limits it to 90 days. 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 overindebtedness 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. 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 overindebtedness (see Article 24 of the Federal Act on Loans with Joint Guarantees as a Consequence of the Coronavirus dated 19 December 2020).	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 no prospects for rehabilitation or for the confirmation of a composition agreement.
Is there a requirement to demonstrate center of main interests (COMI) for a company to file a case in this jurisdiction?	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?	N/A 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.

	Bankruptcy	Composition proceedings
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	Once the estate content 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 with their equity claims.	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 shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	There is no shareholder vote required. 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.	There is no shareholder vote required except that the shareholders have to make an "adequate restructuring contribution in an ordinary composition agreement." 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 (i.e., cramdown)?	N/A	Yes. Dissenting unsecured and nonprivileged creditors may be crammed down if the creditors have approved the composition agreement. Such approval requires either (i) the majority of the unsecured and nonprivileged creditors whose claims amount to at least two-thirds of all unsecured and nonprivileged claims, or (ii) one-quarter of the unsecured and nonprivileged creditors whose claims amount to at least three-quarters of the unsecured and nonprivileged claims. Secured and privileged creditors may not be crammed down.

Commencing the process

	Bankruptcy	Composition proceedings
Who can commence?	A corporation may file for its own bankruptcy upon determination of illiquidity or overindebtedness if the directors do not succeed in negotiating private restructuring measures or composition agreements. Any individual creditor may also initiate bankruptcy proceedings by applying to the competent bankruptcy court for an order to declare the corporation's bankruptcy after going 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 may raise various legal defenses with respect to the financial claim asserted by the applicant. Limited defenses 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.	The debtor, certain creditors and the bankruptcy court may commence composition proceedings.
Is shareholders' consent required to commence proceedings?	No, unless the proceeding is initiated based on the corporation's declaration of its inability to pay.	No, unless the proceeding is initiated based on the corporation's declaration of its inability to pay.
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
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.

	Bankruptcy	Composition proceedings
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. The composition commissioner reports on the debtor's financial affairs status during the creditors' meeting. 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.
How long does it generally take 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 easily commence bankruptcy proceedings 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 easily commence composition proceedings 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.

	Bankruptcy	Composition proceedings
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	N/A Bankruptcy leads to the liquidation of the debtor's assets. From a Swiss perspective, this is worldwide.	Composition proceedings begin with a provisional composition moratorium as the first instrument of creditor protection. The total duration of the provisional composition moratorium may, in any case, not exceed eight 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. Enforcement proceedings against the debtor may neither be continued nor initiated during the composition moratorium. In addition, any interest on unsecured claims ceases to accrue.
Is there a provision for debtor-in-possession or rescuer financing or superpriority or priming 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. During the composition moratorium with the consent of the composition commissioner, Liabilities incurred by the debtor will be satisfied in priority over claims of other creditors in an ensuing liquidation or bankruptcy of the debtor.
Can the procedure be used to implement a debt-to-equity swap?	No	Yes. In a composition agreement with a 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 nonconsenting creditors, this mechanism may be considered a mandatory debt-to-equity swap.
Are third-party releases available?	No	No
Are the proceedings recognized 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?	Time frame, complexity and costs will vary on a case-by-case basis.	Time frame, 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

	Bankruptcy	Composition proceedings
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.
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 overindebtedness 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 overindebtedness, 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 overindebtedness 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 overindebtedness, 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 the assignment of assets, the order of priority of claims is the same as in bankruptcy.
Do pension liabilities have any priority over other unsecured claims?	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.

	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) fulfill 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 overindebtedness (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 the assignment of assets.

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Taiwan

	Bankruptcy
Initial considerations	
Can you take security over all types of assets, including accounts receivable?	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?	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?	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 center of main interests (COMI) for a company to file a case in this jurisdiction?	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. 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.

	Bankruptcy
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	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 shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	No
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	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?	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 proceedings?	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?	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.

	Bankruptcy
What is the level of disclosure of 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 debtor remain in possession with continuation of incumbent management control?	No. Once the debtor is declared bankrupt, it immediately loses the 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?	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?	No
Can procedure be used to implement 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 no proceeding to implement a 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.

	Bankruptcy
Has the UNCITRAL Model Law been adopted?	No
Can a debtor continue to carry on business during insolvency proceedings?	No

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 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?	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?	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. ■ 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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Thailand

	Bankruptcy	Liquidation	Business reorganization
Initial considerations			
Can you take security over all types of assets, including accounts receivable?	Not all types of assets can be secured. Only financial institutions can take security over inventories and accounts receivable.	Not all types of assets can be secured. Only financial institutions can take security over inventories and accounts receivable.	Not all types of assets can be secured. Only financial institutions can take security over inventories and accounts receivable.
What is the nature of the insolvency process?	Both personal and corporate bankruptcy proceedings can only be commenced by a creditor, not a debtor. No provisions allow 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 a shareholders' resolution initiates the dissolution of a company, the company's active 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 will be under the supervision of the Bankruptcy Court and the Official Receiver of the Legal Execution Department.
What is the solvency requirement for a company to file a case in this country?	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 filed the complaint about not less than THB 2 million; and (3) the debt in (2) can be determined as a definite amount, irrespective of whether they are 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 company's total assets must be insufficient to cover all the debt.	The 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 at a definite amount of debts of not 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") for a company to file a case in this country?	No.	No.	No.
Is restructuring of both secured and unsecured claims possible?	Yes.	Not applicable, as the purpose of this regime is to dissolve the company.	Yes.

	Bankruptcy	Liquidation	Business reorganization
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	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 greater than the total claims in the bankruptcy proceedings.	No, for the case of creditors' claim. The shareholders may be classified by the company's articles of association.	Yes. The creditors' claims 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 not 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 into several classes. In the same class, the nature of claims must be essentially identical or similar. Under the plan, the claims of shareholders may be classified into separate classes and receive different treatment from other classes, subject to fairness and good faith.
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	Shareholder approval is not required to commence the case.	Yes, for dissolution only.	Shareholder approval is not required to commence the case unless the company's articles of association provide otherwise in case the company itself commences the case. If the shareholders have a claim against the debtor, they are entitled to vote in their capacity as creditors, not as the shareholders.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes, only in case the debtor proposes a debt composition.	No.	Yes.
Commencing the process			
Who can commence?	Only creditors. There are no provisions allowing voluntary bankruptcy under Thai law.	Shareholders of a debtor through a shareholders' resolution	Both creditors and debtors.
Is shareholder's consent required to commence proceeding?	No.	Yes.	Not in general, except only in cases that 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 debtor's total assets 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.

	Bankruptcy	Liquidation	Business reorganization
Who manages the debtor?	Once the Bankruptcy Court grants the absolute receivership order, the Official Receiver will take control and manage the debtor's assets and business.	The liquidator 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.
What is level of disclosure of 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 reorganisation 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 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 said problem.
How long does it generally take for a creditor to commence the procedure?	Six to twelve months from the date of filing for obtaining the absolute receivership order depending on the court's schedule and the debtor's defense	Three to twelve months after the shareholders' resolution to dissolve a debtor, depending on the assets realization and the complications of the obligation owed to the creditors	Six to twelve months from the date of filing for obtaining the business reorganization order depending on the court's schedule and the objection to the petition for the debtor's business reorganization, for which a trial may be required.
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.

	Bankruptcy	Liquidation	Business reorganization
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	There is no stay or moratorium regime during the trial period, whereby the court will consider whether the absolute receivership order should be issued.	No.	The 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. The automatic stay applies only in Thai jurisdiction.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?	No.	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 procedure be used to implement 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 recognised abroad?	No.	No.	No.
Has the UNCITRAL Model Law been adopted?	No.	No.	No.
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 exceptional case, the Official Receiver, upon the approval of the creditors at the creditors' meeting, can continue such 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 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.

	Bankruptcy	Liquidation	Business reorganization
What is the order of priority of claims?	Secured creditors will receive repayment of not 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 among 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 claims 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 of not 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.
Do pension liabilities have any priority over other unsecured claims?	No.	No.	No.

	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 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 the 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 ten 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 burden than a benefit for the debtor in pursuant to the plan.	No.	It is the same as described in bankruptcy proceedings.

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Turkey

	Financial restructuring	Concordat/Composition (Turkish Scheme of Arrangement)
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	Yes.	Yes, but it will be up to the commercial court's and the commissars' approval.
What is the nature of the insolvency 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.	Composition is an application made before commercial courts by the insolvent company pursuant to Article 285 and continuous provisions of the Execution and Bankruptcy Code No. 2004 (EBC).
What is the solvency requirement for a company to file a case in this country?	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 the debtor's bankruptcy may also file for composition.
Is there a requirement to demonstrate COMI ("centre of main interests") for a company to file a case in this country?	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.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	No.	Secured and unsecured creditors are separately classified. However, there is no separation between creditors and shareholders for purposes of voting and treatment under plan or scheme.

	Financial restructuring	Concordat/Composition (Turkish Scheme of Arrangement)
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	No, unless the articles of association require this. Shareholders are not entitled to vote on a plan.	Voting approvals by shareholders are not required unless the articles of association require this. No, shareholders are not entitled to vote on a plan. The creditors vote the composition plan.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	There is no ability to bind dissenting creditors to any write-off per voting majorities. There is limited ability to bind dissenting creditors for additional lending per voting majorities. Two-thirds by value majority in relation to other matters will bind dissenting creditors who are signatories to the FA. Will not bind non-signatories.	Dissenting creditors may be bound by the plan's terms subject to requisite majority approvals.
Commencing the process		
Who can commence?	Debtor's board of directors — see "Is there an ability to bind minority dissenting creditors?" above.	The company's board of directors may commence voluntary proceedings at any time. Creditors in a position to file for the debtors' bankruptcy 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/commissaries (konkordato komiseri) manages the debtor. The court determines the scope of their duties and authorizations 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.

	Financial restructuring	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 Execution and Bankruptcy Code No. 2004 (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?	The debtor continues to remain in possession with the continuation of incumbent management control but is subject to the terms of an undertaking, which it is obliged to provide to the creditors limiting its ability to take certain actions, e.g., asset disposal.	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.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	The stay will only continue for 90 days unless extended by the CIC (two-thirds by value and two by number approval). The moratorium will fall away if an FRC is not signed. The moratorium is only local and concerns the creditors that have signed FA.	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. The pledged asset can also be sold during the definitive and temporary terms if it is not envisaged to be used pursuant to the composition project, or its value will decrease, or its preservation will be costly. As a result of the sale, payment will be made to the pledged creditor from the sales revenue in the amount of the pledged amount. ■ 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 if the contract is extremely burdensome.

	Financial restructuring	Concordat/Composition (Turkish Scheme of Arrangement)
		■ 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 movables that are important for continuing the business and/or establishing any collateral over those assets without the court's permission. The court is required to obtain the creditors board's permission to grant permission to these transactions. If the debtor violates this article, any transaction made would be deemed void. The stay/moratorium decisions are Turkish court judgments binding for all the creditors and the relevant parties in Turkey.
Is there a provision for debtor in possession or rescuer financing or superpriority or priming 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 the creditors may take as part of restructuring.	No
Are third party releases available?	Yes, subject to the approval of 100% of the creditors.	No.
Are the proceedings recognised abroad?	This is highly questionable as it does not operate as a collective insolvency proceeding subject to the supervision of a court.	No.
Has the UNCITRAL Model Law been adopted?	No.	No.
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, which it is obliged to provide to commence the process, limiting its ability to take certain actions, e.g., dispose of assets and grant security.	See "Does the debtor remain in possession with the continuation of incumbent management control?" above.

	Financial restructuring	Concordat/Composition (Turkish Scheme of Arrangement)
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.
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 custody or guardianship ■ Claims prioritized under various laws ■ Other unsecured claims	As the composition is a restructuring of debts and not a liquidation process, certain claims are prioritized over others. Without prejudice to the difference between the secured and unsecured receivables, all claims are treated equally and paid according to the composition project.
Do pension liabilities have any priority over other unsecured claims?	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 considerably 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 were 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	No.

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UAE

	Schemes of arrangement	Insolvency and liquidation
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	Yes, security can be taken over all types of assets, including accounts receivables, under the law on the pledge of movables and the recently issued factoring law. Such security requires perfection either by registering it at the Emirates Integrated Registry or by control.	There are three types of processes under the UAE insolvency law: ■ A preventative composition that takes place before the actual cessation of payments ■ A scheme of arrangement that could take place after the cessation of payment ■ A liquidation and sale of assets if there is no buy-in from the debtor or the company cannot be restructured
What is the nature of the insolvency process?	It is an in-court process overseen by the insolvency judge with the assistance of an insolvency trustee appointed by the judge upon the debtor's suggestion.	
What is the solvency requirement for a company to file a case in this country?	A debtor must evidence that it could emerge out of insolvency as a result of the scheme by putting a plan in place. 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 waiting 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 plan must allow the debtor to emerge out of insolvency within six years if in preventative composition or eight years if in a restructuring phase.	
Is there a requirement to demonstrate COMI ("centre of main interests") for a company to file a case in this country?	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 location of the insolvent. While under the old insolvency law, which was embedded in the Code of Commercial Transactions, an article 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.	Our view is that the situation should remain the same under the current insolvency law, despite the lack of legal provisions and that a branch of a foreign company could attract the insolvency of its parent in the UAE. If the parent is solvent, it could easily dismiss the action by either providing some guarantees or paying off the creditors.

	Schemes of arrangement	Insolvency and liquidation
Is restructuring of both secured and unsecured claims possible?	A vote on either the preventative composition plan or the restructuring plan requires an affirmative vote by a majority of the creditors holding two-thirds of the value of the insolvent's debt. In principle, secured creditors are not allowed 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 security if it is in the best interest of the creditors and for the purpose of implementing the plan and continuing the business. The court may also allow superpriority of new financing if sought by the trustee and approved by the court, thus displacing first ranking security.	
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	The law provides for several committees of creditors to be formed to discuss the schemes. However, the overall creditors make the vote on the plan.	
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	Yes, depending on the articles of association of the company and the powers of the Board of Directors or the shareholders. A resolution is required to be submitted to the court upon launching an insolvency procedure. Shareholders are not entitled to vote on the plan unless they are themselves, creditors.	
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	Yes, once the plan is voted on at the required majority, which is a majority of the creditors holding two-thirds of the debt, then it would be binding on all.	

Commencing the process

Who can commence?

Is shareholder's consent required to commence proceeding?	■ Only the debtor can apply for a preventative composition if it defaults on its debts for less than 30 days or is in a difficult financial situation. ■ The debtor or creditors for the restructuring plan, provided: – For the debtor, that it is in default of payment for more than 30 days or it is in a state of over-indebtedness – For the creditors holding more than AED 100,000 in debt provided that they have served a notice upon the debtor requesting them to cure the default within 30 days – A secured creditor that has seen a fall in the value of its security and it does not secure a loan anymore	The debtor or creditors may file for insolvency or public prosecution if it is in the public's interest at large. Creditors must hold more than AED 100,000 of debt and have served a notice on the debtor requesting them to cure the default within 30 days.

	Schemes of arrangement	Insolvency and liquidation
Is there an ability to consolidate group estates?	No, while the concept of a holding company was recently introduced in the Commercial Companies Law, each company must have its own insolvency procedure in matters of insolvency. There are some exceptions, for example, when there is financial or managerial and administrative confusion between the various group companies, so it is somehow impossible to distinguish them.	No, while the concept of a holding company was recently introduced in the Commercial Companies Law, each company must have its own insolvency procedure in matters of insolvency. There are some exceptions, for example, when there is financial or managerial and administrative confusion between the various group companies, so it is somehow impossible to distinguish them
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.
Who manages the debtor?	A trustee appointed by the court upon the suggestion of the debtor. The court may act upon such a suggestion or may appoint another trustee.	A trustee appointed by the court upon the suggestion of the debtor. The court may act upon such a 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 debtor's debtor's situation 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 a class of creditors, i.e., secured, unsecured, bondholders, etc.). Once the plan has been discussed with the creditors and a final form has been reached, it will again be submitted to the court, which 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 ten 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 a sale is by way of public auction.

	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, theaters, 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, 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 is 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, theaters, 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.
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.
Effect of process		
Does debtor remain in possession with continuation of incumbent management control?	Under the schemes of arrangement, yes, the debtor remains in possession and management remains in control, with the assistance of the trustee and supervision of the court.	Under the insolvency and liquidation process, the trustee replaces management.
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	There is a moratorium between the application period 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 its security within ten days from the date of the application, after ensuring that there is no collusion between the debt and the secured creditor.

	Schemes of arrangement	Insolvency and liquidation
Is there a provision for debtor in possession or rescuer financing or superpriority or priming 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 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, 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, while the UAE legislator is working very closely with the World Bank and the IFC on the law and any amendments thereto.	No, while the UAE legislator is working very closely with the World Bank and the IFC on the law and any amendments thereto.
Can a debtor continue to carry on business during insolvency proceedings?	Yes, for purposes of fulfilling the plan.	Yes, during the sale process.
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.
What is the order of priority of claims?	■ Government and Treasury debt ■ Employees for up to three months' salaries ■ Secured creditors ■ Unsecured creditors ■ Shareholders	■ Government and Treasury debt ■ Employees for up to three months salaries ■ Secured creditors ■ Unsecured creditors ■ Shareholders
Do pension liabilities have any priority over other unsecured claims?	No.	No.

	Schemes of arrangement	Insolvency and liquidation
Is it possible to challenge prior transactions?	Yes, for 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: ■ Donations, gifts or gratuitous transactions ■ Any transactions that would be remarkably onerous for the debtor in comparison with the counterparty ■ Settling any loan before its maturity date ■ Settling any loans in means other than the means that were agreed upon ■ 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 if the counterparty acted in bad faith (i.e., cognizant of the dire situation of the debtor).	Yes, transactions were conducted two years before insolvency. Some transactions would be considered de jure null and void if conducted up to two years before insolvency; these are: ■ Donations, gifts or gratuitous transactions ■ Any transactions that would be remarkably onerous for the debtor in comparison with the counterparty ■ Settling any loan before its maturity date ■ Settling any loans in means other than the means that were agreed upon ■ 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 if the counterparty acted in bad faith (i.e., cognizant of the dire situation of the debtor).

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United States

	Chapter 11 of the United States Bankruptcy Code
Initial considerations	
Can you take security over all types of assets, including accounts receivable?	Generally, yes. In general, security interests are created and perfected under the non-bankruptcy laws of the various states and applied with equal force under all chapters of the Bankruptcy Code. While liens and security interests in real property may take different forms from state to state, such interests in personal and intangible property tend to be governed by the provisions of the Uniform Commercial Code as adopted in most of the 50 states.
What is the nature of the insolvency process?	Chapter 11 of the United States Bankruptcy Code ("**Bankruptcy Code**") may be used to effect an operational restructuring, balance sheet deleveraging and/or commence a court-supervised sale of the business, in whole or in part, as a going concern, with assets sold to a purchaser free and clear of liens, claims and encumbrances under an order of the Bankruptcy Court.
What is the solvency requirement for a company to file a case in this jurisdiction?	A US or eligible foreign company can file a voluntary petition for relief under Chapter 11 without regard to solvency, so long as it enters the process with a good faith purpose and intention to restructure its financial condition and/or sell its assets on a going-concern basis. In an involuntary bankruptcy case commenced by creditors, the petitioning creditors must establish that the company is generally not paying its debts as they become due.
Is there a requirement to demonstrate center of main interests (COMI) in order to file a case in this jurisdiction?	No. The concept of COMI comes into play in the US only in cases filed under Chapter 15 of the Bankruptcy Code, seeking recognition and relief in connection with a foreign proceeding pending in another jurisdiction. The eligibility requirements for a Chapter 11 filing are quite liberal, requiring only that the debtor have a domicile, place of business or property in the US. As a result, and particularly in the last two years, a growing number of foreign companies have elected to effectuate their financial restructurings through US Chapter 11 cases rather than the laws of their home countries. If COMI exists elsewhere, creditors may ask the court to dismiss the case in favor of commencement of the proceedings in another jurisdiction; however, this effort by creditors has failed in many cases.
Is restructuring of both secured and unsecured claims possible?	Yes. While secured and unsecured claims must be classified and treated separately under a Chapter 11 plan, both classes of claims are subject to and bound by the restructuring proceeding.
Are the claims and interests of creditors and shareholders put into separate classes for purposes of voting and treatment under the restructuring plan?	Yes. Only similarly situated creditors can be placed in the same class for voting purposes; however, the proponent of a Chapter 11 plan has some flexibility in the classification scheme, so long as the proposed classification does not result in unfair discrimination or otherwise violate the Bankruptcy Code, including the absolute priority rule. Creditors and shareholders must be classified separately.

Chapter 11 of the United States Bankruptcy Code

Is shareholder approval required to commence a Chapter 11 case? Are shareholders entitled to vote on a plan?

The commencement of a Chapter 11 case requires the approval of a company's board of directors or managers. Absent a provision in the organizational documents requiring approval by equity holders, such approval is not required.

As the lowest level of stakeholders under the Bankruptcy Code's absolute priority rule, shareholders are often "out of the money," receive or retain nothing under a Chapter 11 plan, and accordingly are deemed to have rejected the plan without the necessity of a vote. If the company has sufficient value to provide for some recovery to shareholders, they are typically granted the right to vote on a plan, subject to "cram down" in the form of the Court confirming the plan, notwithstanding the vote of the shareholder class to reject it.

Is there an ability to bind minority dissenting creditors?

A Chapter 11 plan may bind a dissenting member of an accepting class so long as it meets the requirements imposed by the Bankruptcy Code, including the requirement that each class of creditors receive at least as much in the form of recovery under the plan as it would have received in a Chapter 7 liquidation.

The plan must be fair and equitable to bind a dissenting creditor class 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.

The plan must satisfy the absolute priority rule for an unsecured dissenting class.

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. As the Bankruptcy Code prohibits only "unfair discrimination," a plan may provide for disparate treatment of similarly situated classes of creditors so long as the differences are not "unfair" to the dissenting class.

The fair and equitable test for a plan cramdown 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 retains 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 challenges. 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.

Chapter 11 of the United States Bankruptcy Code

Commencing the process

Who can commence?

A voluntary case can be commenced by the debtor itself, with relief deemed granted automatically upon filing of the voluntary petition.

An involuntary case may be commenced by less than all of the general partners in a partnership, or in most instances, by three or more creditors holding unsecured claims aggregating USD 16,750 (effective 1 April 2019) that are "not contingent as to liability or the subject of a bona fide dispute as to liability or amount." Where the involuntary debtor has fewer than 12 such creditors, the case may be commenced by a single eligible creditor.

Unlike a voluntary petition, the filing of an involuntary case does not automatically lead to relief or place the alleged debtor "in bankruptcy"; rather, the petitioning creditor(s) must establish through an evidentiary hearing that the debtor is not generally paying its debts as they become due.

A debtor that is the subject of an involuntary petition may consent to the grant of relief, effectively converting the case to a voluntary case without the necessity of a trial to establish the "equitable insolvency" of the debtor as described above.

Is there an ability to consolidate group estates?

Yes, with such "consolidation" taking a number of different forms.

As each corporate entity must file or be the subject of its own Chapter 11 case, the bankruptcy court may order that cases of related debtors be "jointly administered" as an administrative convenience, with all court filings made in the case designated as the "lead case." Unlike substantive consolidation addressed below, joint administration does not combine the assets or liabilities of the related debtors.

Bankruptcy courts may authorize the substantive consolidation of debtors' estates in limited circumstances. Substantive consolidation 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. In other limited circumstances, debtors have proposed plans calling for "deemed substantive consolidation," in which the claims of all creditors are paid from a common pool of assets drawn from the various debtor entities, with each entity retaining its separate corporate existence after confirmation of the plan.

Is there any court involvement?

A federal bankruptcy court oversees the proceeding and court approval is required for the use, sale and lease of assets outside the ordinary course of the debtor's business. Court approval is not required for activities within the ordinary course of business, including the incurrence and payment of an unsecured debt through continued trading and business activity while in Chapter 11.

Who manages the debtor?

In a Chapter 11 case, the debtor in almost all cases will be operated as a "debtor in possession" by the same directors and officers under the same principles of governance as prior to the bankruptcy filing, subject to the supervision of the bankruptcy court. In rare and extraordinary cases in which the court is persuaded upon application of a creditor or party in interest that the existing management has engaged in acts rising to the level of fraud, dishonesty, incompetence or gross mismanagement, a Chapter 11 trustee would be appointed, and upon appointment, succeed to all of the powers, rights and duties of the former board.

What is the level of disclosure required in order to obtain the votes of creditors on a plan?

A Chapter 11 plan must be accompanied by a disclosure statement that has been preapproved by the bankruptcy court as containing "adequate information" about a debtor's financial affairs and a proposed plan to enable creditors to make an informed decision on whether to accept the plan. With few exceptions, no votes in favor of (or against) a proposed plan can be solicited after the Chapter 11 filing until such time as the court has approved the disclosure statement.

Chapter 11 of the United States Bankruptcy Code

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 severe 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 or receiver 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. In either instance, the holding company of the bank, and direct subsidiaries of the holding company, remain eligible to file and administer their own cases under Chapter 11.

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

As described above, subject to certain conditions, 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, and sometimes can last several months. If the bankruptcy court ultimately rules in favor of the petitioning creditors, it will enter an order for relief that 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. An exception exists for the appointment of an interim trustee, in the rare instance in which the petitioning creditor(s) can establish that such appointment is "necessary to preserve the property of the estate or prevent loss to the estate."

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 of up to not more than 18 months from the date of the order for relief. After this period expires or is terminated by the court, other parties in interest may propose their own Chapter 11 plan.

Chapter 11 of the United States Bankruptcy Code

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

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 the 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 policy 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 granting relief from the automatic stay or, if uncertain, that the stay does not apply to the act proposed to be undertaken.

The automatic stay is theoretically applicable worldwide, coextensive with the original and exclusive jurisdiction of the bankruptcy court over all property of the debtor, "wherever located." As a practical matter, enforcement of the stay against the debtor of its assets outside the United States can be difficult against a creditor that has no assets in the United States or other connection to the United States. In such instances, it may be advisable for the debtor and bankruptcy court to appoint a foreign representative or other person or body to commence an ancillary insolvency proceeding in the foreign country, obtain recognition of the Chapter 11 case in that proceeding, and seek enforcement of the stay by the foreign court.

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

Yes, and the provisions are quite extensive and more widely used in cases under Chapter 11 than in restructuring proceedings in many other countries.

A debtor can seek to entice lenders to provide debtor-in-possession financing ("**DIP financing**") with a range of tools that bankruptcy courts routinely approve. 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 superpriority administrative claim (having priority over all other administrative claims). However, lenders usually require more than a simple administrative priority or superpriority 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 the property that is already encumbered by a lien. Even though general unsecured creditors may object and insist on a showing of necessity for 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 interests of the existing lender are "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 prime their existing liens, absent a clear 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 — this is a common feature of balance sheet restructurings that occur in Chapter 11 cases. Shareholder consent is not required, and the debt-for-equity swap can occur over the objection of shareholders as a result of the absolute priority rule and cramdown (each discussed above). Indeed, increasingly in recent years, prepackaged and prenegotiated Chapter 11 plans are arranged with the holders of "fulcrum debt" — the tranche of debt that is only partly covered by the going concern value of the company — in advance of the bankruptcy filing; and debt-for-equity swap plans are confirmed quickly by the courts in accordance with such arrangements.

	Chapter 11 of the United States Bankruptcy Code
Are third party releases available?	This is a highly controversial question and a "hot topic" in the United States. The Bankruptcy Code has been interpreted differently on this point by appellate courts in the various judicial circuits, and the Supreme Court has yet to issue a definitive decision to bring some consistency to this oft-litigated question. In jurisdictions where third-party releases are not absolutely prohibited, 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. The disparate treatment of releases is to be distinguished from the more common and less controversial practice of granting exculpation to third parties, including their respective professionals, for acts and conduct undertaken in the course of the Chapter 11 case.
Are the proceedings recognized abroad?	Yes. In accordance with the domestically adopted version of UNCITRAL or other applicable principles of international comity and/or treaties for other countries, cases under Chapter 11 are customarily granted recognition and enforcement in foreign courts, other than in those countries that as a matter of local law do not recognize foreign judgments.
Has the UNCITRAL Model Law been adopted?	Yes — the Model Law was adopted as Chapter 15 of the Bankruptcy Code in 2006, and a wealth of case law has developed over its application and interpretation.
Can a debtor continue to carry on business during insolvency proceedings?	Absent a finding by the bankruptcy court of fraud, dishonesty, incompetence, gross mismanagement or similar circumstances, the existing management of a company remains in control of the company and continues to manage its business operations and day-to-day affairs during the Chapter 11 case. A debtor can continue to do business during the Chapter 11 case, including trading and incurring unsecured debt in the ordinary course of its business, subject to obtaining court approval for any transactions outside of that ordinary course.
Other factors	
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	None, other than a generally discredited theory of prolonging insolvency or deepening insolvency that has been recognized in rare circumstances only by a very small and shrinking 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. Directors tend in most instances to be protected by indemnification provisions covered by insurance policies owned by the company, and further by exculpations that are commonly granted upon confirmation of Chapter 11 plans.
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 are entitled to priority under Section 507 of the Bankruptcy Code – for example, those holding claims incurred during the administration of the case and that was 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)

Chapter 11 of the United States Bankruptcy Code

Do pension liabilities hold any priority over other types of unsecured claims?

There is a partial, fifth-level priority created under section 507(a)(5) of the Bankruptcy Code for contributions to an employee benefit plan arising from services rendered within 180 days before the filing of the bankruptcy case (or cessation of the company's business, if earlier), limited to the amount of USD 13,650 multiplied by the number of employees covered by each such plan.

A debtor may also 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 or trustee, or in certain instances a committee of creditors, 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 or nullify 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; in rare instances in which the Internal Revenue Service was a creditor at the time of the subject transfer, some courts have extended the reachback period to 10 years.

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Venezuela

	Moratorium	Bankruptcy
Initial considerations		
Can you take security over all types of assets, including accounts receivable?	Yes.	Yes.
What is the nature of the insolvency process?	A moratorium is a benefit that a court may grant to commercial companies and individual merchants whose assets exceed their liabilities but are unable to pay their debts at maturity due to an excusable lack of liquidity. The objective of the moratorium proceeding is to grant the debtor a term not exceeding 12 months to satisfy its creditors. The court may extend the original term for an additional term of up to 12 months under certain circumstances. In practice, some courts have extended the term of the moratorium even longer than the period expressly contemplated by the Commercial Code. If during the term of the moratorium proceeding the debtor is unable to satisfy all of its creditors or is unable to reach a settlement with the latter, the debtor will automatically become subject to bankruptcy proceedings.	Unlike moratorium, bankruptcy is neither 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 one 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 for a company to file a case in this country?	A moratorium is available to those debtors whose assets exceed their liabilities (i.e., who are not insolvent) but cannot pay their debts at maturity due to a lack of liquidity. In order to be eligible for a moratorium, the debtor must show that the lack of liquidity is excusable or caused by unforeseen events.	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 a moratorium.
Is there a requirement to demonstrate COMI ("centre of main interests") for a company to file a case in this country?	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.

	Moratorium	Bankruptcy
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	Creditors only	Creditors only
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	No. However, any approvals will be subject to the specific provisions of the Articles of Incorporation/By-Laws or those imposed by the court (if any).	No. However, any approvals will be subject to the specific provisions of the Articles of Incorporation/By-Laws or those imposed by the court (if any).
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	No. However, any approvals will be subject to the specific provisions of the Articles of Incorporation/By-Laws or those imposed by the court (if any).	No. However, any approvals will be subject to the specific provisions of the Articles of Incorporation/By-Laws or those imposed by the court (if any).
Commencing the process		
Who can commence?	A moratorium is commenced by the debtor's petition only. The debtor must file the petition 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 company generally becomes unable to pay its debts at maturity). ■ One or more creditors ■ A court denying or revoking a petition for a moratorium or declaring the expiration of the term of the moratorium
Is shareholder's consent required to commence proceeding?	No. It is not a legal requirement to obtain consent from a company's board of directors or shareholders prior to filing any insolvency proceedings available in Venezuela. However, a corporate resolution could be required if established in the Articles of Incorporation/By-Laws.	No. It is not a legal requirement to obtain consent from a company's board of directors or shareholders prior to filing any insolvency proceedings available in Venezuela. However, a corporate resolution could be required if established in the Articles of Incorporation/By-Laws.
Is there an ability to consolidate group estates?	Yes, only contractually.	Yes, only contractually.
Is there any court involvement?	Yes. As mentioned above, the debtor must file the petition before a competent court.	Yes.

	Moratorium	Bankruptcy
Who manages the debtor?	Generally, 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 court may also completely deprive the debtor of its business management. While the moratorium request is being resolved, the individual merchant or company can only perform simple detail operations.	The creditors administer the debtor's assets and businesses. The company is completely deprived of its capacity to manage its assets.
What is level of disclosure of process to voting creditors?	There are no levels of disclosure established in Venezuelan law. However, they may be subject to the specific provisions of the Articles of Incorporation/By-laws (if any).	There are no levels of disclosure established in Venezuelan law. However, they may be subject to the specific provisions of the Articles of Incorporation/By-laws (if any).
What entities are excluded from customary insolvency or reorganisation 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 Office of the Superintendent of the Insurance Activity (SUDEASEG) to perform insurance activities in Venezuela ■ Securities intermediaries authorized by the Office of the National Superintendent of Securities (SNV) to perform securities intermediation activities in Venezuela ■ Banks and financial institutions authorized by the Office of the Superintendent of Banking Sector Entities (Superintendent of Banks) to perform banking activities in Venezuela ■ Public companies	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 Office of the Superintendent of the Insurance Activity (SUDEASEG) to perform insurance activities in Venezuela ■ Securities intermediaries authorized by the Office of the National Superintendent of Securities (SNV) to perform securities intermediation activities in Venezuela ■ Banks and financial institutions authorized by the Office of the Superintendent of Banking Sector Entities (Superintendent of Banks) to perform banking activities in Venezuela ■ Public companies
How long does it generally take for a creditor to commence the procedure?	N/A A moratorium is commenced by the debtor's petition only. The debtor must file the petition before a competent court.	It is not possible to determine how long it would take to commence this procedure.
Effect of process		
Does debtor remain in possession with 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 company is completely deprived of its capacity to manage its assets.

	Moratorium	Bankruptcy
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	One of the main consequences of a moratorium is that debts contracted prior to the moratorium mature by operation of law and become due. Additionally, nonprivileged debts contracted before the declaration of the 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 the 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 the 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 the 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 or rescuer financing or superpriority or priming financing?	This is not regulated in Venezuelan law. This will be subject to the specific provisions of the Articles of Incorporation/By-Laws (if any).	This is not regulated in Venezuelan law. This will be subject to the specific provisions of the Articles of Incorporation/By-Laws (if any).
Can procedure be used to implement debt-to-equity swap?	Yes. It may be agreed upon contractually.	Yes. It may be agreed upon contractually.
Are third party releases available?	N/A	N/A
Are the proceedings recognised abroad?	From a Venezuelan legal standpoint, the general rule is that in order to be enforceable in Venezuela, foreign awards, as judgments rendered by foreign courts, must be recognized in Venezuela through a procedure known as exequatur. The exequatur procedure is activated through a motion filed with the Supreme Court requesting the recognition of a foreign judgment. The petition must comply with the requirements of a complaint under Venezuelan law and must be attached to the judgment or award. For a Venezuelan proceeding to be recognized abroad, it will depend on the existence of a treaty (e.g., Bustamante Code). In the absence of a treaty, this will depend on the corresponding legislation of each jurisdiction.	From a Venezuelan legal standpoint, the general rule is that in order to be enforceable in Venezuela, foreign awards, as judgments rendered by foreign courts, must be recognized in Venezuela through a procedure known as exequatur. The exequatur procedure is activated through a motion filed with the Supreme Court requesting the recognition of a foreign judgment. The petition must comply with the requirements of a complaint under Venezuelan law and must be attached to the judgment or award. For a Venezuelan proceeding to be recognized abroad, it will depend on the existence of a treaty (e.g., Bustamante Code). In the absence of a treaty, this will depend on the corresponding legislation of each jurisdiction.
Has the UNCITRAL Model Law been adopted?	No.	No.

	Moratorium	Bankruptcy
Can a debtor continue to carry on business during insolvency proceedings?	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 may also be completely deprived by the court of its business management. While the moratorium request is being resolved, the individual merchant or company can only perform simple detail operations.	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.
Other factors		
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	Under Venezuelan law, directors have no specific liability for failing to file accounts or other corporate maintenance requirements but an only civil liability. A director is liable to the company for damages resulting from a breach by the director of the terms and conditions of that contract (Civil Code, Arts. 1264, 1689). The terms and conditions of the director-company relationship are those specifically provided in the company's Articles of Incorporation/By-Laws, as well as those arising from specific statutory provisions. The Commercial Code also imposes certain affirmative duties and specific restraints on corporate directors in the conduct of the company's affairs. It appears that the purposes underlying these provisions of the law are (i) to assure proper shareholder supervision and control over the conduct of corporate affairs and (ii) to protect third parties in their dealings with the company. Directors who fail to perform required duties or who act counter to specific restraints imposed by law are liable to the company for any losses suffered as a result of such directors' misconduct (Commercial Code, Arts. 243, 266(4)). As set forth in Articles 1270 and 1692 of the Civil Code, corporate directors, as parties to a contract of mandate, must exercise the degree of diligence in the conduct of corporate affairs that a "good father of a family" would exercise in the conduct of the family's affairs. Therefore, it would be a potential liability if the breach of these duties by the directors leads to damages for the company. 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 company's Articles of Incorporation/By-Laws. If the directors attempt to exercise unauthorized powers, they will be civilly and criminally liable.	Under Venezuelan law, directors have no specific liability for failing to file accounts or other corporate maintenance requirements, only civil liability. A director is liable to the company for damages resulting from a breach by the director of the terms and conditions of that contract (Civil Code, Arts. 1264, 1689). The terms and conditions of the director-company relationship are those specifically provided in the company's Articles of Incorporation/By-Laws, as well as those arising from specific statutory provisions. The Commercial Code also imposes certain affirmative duties and specific restraints on corporate directors in the conduct of the company's affairs. It appears that the purposes underlying these provisions of the law are (i) to assure proper shareholder supervision and control over the conduct of corporate affairs and (ii) to protect third parties in their dealings with the company. Directors who fail to perform required duties or who act counter to specific restraints imposed by law are liable to the company for any losses suffered as a result of such directors' misconduct (Commercial Code, Arts. 243, 266(4)). As set forth in Articles 1270 and 1692 of the Civil Code, corporate directors, as parties to a contract of mandate, must exercise the degree of diligence in the conduct of corporate affairs that a "good father of a family" would exercise in the conduct of the family's affairs. Therefore, it would be a potential liability if the breach of these duties by the directors leads to damages for the company.

	Moratorium	Bankruptcy
What is the order of priority of claims?	Because the moratorium is designed to assist the 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. As we said before, nonprivileged debts contracted before the declaration of the moratorium is subject to a stay in a moratorium proceeding. However, the stay does not apply to nonprivileged debts contracted after the declaration of a moratorium that has been authorized by the moratorium court and the creditors' committee. Privileged debts and secured debts are not subject to a stay, provided that the secured or privileged creditors do not affirmatively vote for granting the moratorium. Privileged and nonprivileged debts that were not due prior to the declaration of moratorium mature by operation of law and became due and payable as of the date thereof. Therefore, not being subject to the automatic stay, privileged creditors are entitled to sue for collection of their claims.	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 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 hold labor claims, including past-due salaries, severance benefits, and 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. 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.
Do pension liabilities have any priority over other unsecured claims?	Yes, since pension liabilities are labor-related, the order of priorities mentioned above will apply.	Yes, since pension liabilities are 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).

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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, the obligor must own the asset (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, 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 process?	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	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 country?	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.	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 center of main interests (COMI)?	Yes, to define the competent business registration authority and tax authority, the company should submit dossiers for dissolution.	Yes, in order to define the jurisdiction of the court.
Is restructuring of both secured and unsecured claims possible?	N/A	Yes.
Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?	No.	There is no classification for shareholders. Creditors are classified as (1) secured creditors, (2) partially secured creditors, or (3) unsecured creditors.

	Dissolution	Bankruptcy
Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?	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).	No, shareholders' vote is not required to initiate the bankruptcy process.
Is there an ability to bind minority dissenting creditors (i.e., cramdown)?	No, however, creditors can object to the voluntary dissolution of a company. This is done by filing a petition to the court.	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?	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.	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 shareholders' consent required to commence proceedings?	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.	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 a group of companies are not consolidated.	No. Assets and liabilities of a group of companies are not consolidated.
Is there any court involvement?	Yes, in case the company should be dissolved upon the decision of the court.	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.

	Dissolution	Bankruptcy
Who manages the debtor?	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	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?	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.	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?	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.	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?	The creditors cannot commence the dissolution process.	Following are the main stages and relevant time frame as stipulated under the Bankruptcy Law to commence the bankruptcy procedure: 1. Acceptance of jurisdiction over the petition: around two months from the date of submission of the petition 2. 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?	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.	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.

	Dissolution	Bankruptcy
What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?	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	■ 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?	No.	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 the procedure be used to implement a debt-to-equity swap?	No.	Yes, during the company's business recovery, the creditors can buy shares of the insolvent company to become shareholders.
Are third party releases available?	No.	No.
Are the proceedings recognized 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.
Can a debtor continue to carry on business during insolvency proceedings?	Generally no, except for entering into a 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.

Other factors

	Dissolution	Bankruptcy
Are there any wrongful or insolvent trading restrictions and what is the directors' liability?	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	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?	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.	The 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 labor contracts and collective bargaining agreements **iii.** Debts incurred after the initiation of bankruptcy that is used for resuming business operations **iv.** 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?	No. This is not applicable under Vietnam laws as pension liabilities will come from social insurance funds, which are controlled by the government.	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?	No.	Yes. The below transactions will be challenged and may be declared invalid by the court: **1.** 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 **2.** Transactions with related persons within 18 months prior to the date when the court issued a decision to commence the bankruptcy procedures.

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