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Insolvency

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Vietnam VILAF



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Law and Practice

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VILAF is one of the oldest and largest independent business law firms in Vietnam. With 26 years of experience, the firm has been growing alongside and contributing to the development of Vietnam business and investment laws since the early days of the country opening its door to for-

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1. Market Trends and Developments

1.1 State of the Restructuring Market

There is no official, comprehensive statistical data on the restructuring market in Vietnam.

According to the information provided by the Business Registration Management Authority under the Ministry of Planning and Investment of Vietnam, in 2017, 38,869 enterprises temporarily stopped operating without de-registering or waiting for dissolution; while the number of enterprises having completed the dissolution procedure was 12,113. In 2018, 27,126 enterprises were registered for temporary business suspension, and 63,525 enterprises temporarily suspended operation without de-registering or waiting for dissolution; while the number of enterprises completing dissolution procedures was 16,314. In the first nine months of 2019, 21,243 enterprises were registered for temporary business suspension and 28,254 enterprises were waiting for dissolution; while the number of enterprises completing dissolution; while the number of enterprises were waiting for dissolution; while the number of enterprises completing dissolution; while the number of enterprises were waiting for dissolution; while the number of enterprises completing dissolution procedures was 12,067.

Compared to the number of businesses and co-operatives that have suspended their operations, the number of cases resolved through insolvency proceedings in court is still fairly low. In a workshop on the status of the implementation of eign investment. The firm stands out in the market for its top-notch services in all key legal practices including energy and infrastructure, corporate and M&A, banking and finance, capital markets, real property, construction and dispute resolution.

the Bankruptcy Law and its guiding regulations conducted by the Supreme People's Court of Vietnam in 2018, it was reported that there were 439 bankruptcy cases accepted and handled by the courts in 2017, but among these cases only 45 enterprises were declared bankrupt. This may be because the provisions of the Bankruptcy Law are not yet clear and Vietnam lacks a feasible mechanism to enforce it in practice.

1.2 Changes to the Restructuring and Insolvency Market

There have been no significant changes in recent years to the restructuring and insolvency market in Vietnam.

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

2.1 Overview of Laws and Statutory Regimes

The Bankruptcy Law is the principal legislation governing insolvency and bankruptcy-related matters in companies in Vietnam. The Bankruptcy Law provides uniform insolvency proceedings applicable to all companies with no distinction, unless the insolvent company is a credit institution, which is defined by the Law on Credit Institutions of Vietnam (Credit Institutions) to include commercial banks, financial companies, finance-leasing companies, micro-finance institutions and people's credit funds.

A financial restructuring, reorganisation or liquidation can be implemented in one of two ways. The first way is under the Bankruptcy Law, and the second is under the Enterprise Law.

The Enterprise Law

The Enterprise Law governs liquidations under dissolution proceedings and financial restructurings which cause a change in the capital structure or capital amount of the relevant company, eg, raising capital from shareholders or members of the company. Reorganisation also falls within the scope of the Enterprise Law if the reorganisation results in the establishment or termination of at least one enterprise, or a change in the corporate form of a company.

The Bankruptcy Law

The Bankruptcy Law applies to reorganisations, financial restructurings, and liquidations which are carried out as part of insolvency proceedings. Reorganisation of a company under insolvency proceedings usually causes internal changes in the organisational structure or business strategies of the company. Reorganisation under the Bankruptcy Law, therefore, may take the form of a merger, division, or separation of manufacturing departments, or a restructuring of the management apparatus, or changes in the product lines of the enterprise. During insolvency proceedings, the insolvent company is allowed to take financial restructuring measures provided that they are not contrary to the law of Vietnam. Examples of common financial restructuring measures are raising equity capital or loan capital, or rescheduling debts.

The purposes of liquidation under bankruptcy or dissolution proceedings are similar. The significant difference between these procedures is the party in charge of carrying out the liquidation. Under bankruptcy, liquidation is carried out by an asset management officer or asset management and liquidation enterprise (the Receiver) after the judge in charge grants a decision declaring bankruptcy. Under dissolution proceedings, however, liquidation is normally conducted by the owners of the enterprise unless its charter (ie, its articles of association) provide otherwise.

The main focuses of the Bankruptcy Law are insolvency proceedings, the responsibilities of related parties during the insolvency proceedings, procedures for recovery of the business operation, as well as measures for preservation of the enterprise's assets. The Bankruptcy Law, however, does not provide further details on how to implement financial restructurings, reorganisations or liquidations.

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

The Bankruptcy Law does not classify insolvency proceedings into voluntary and involuntary. However, such classification can reasonably be assumed based on the status of the person filing the bankruptcy petition. For example, insolvency proceedings may be considered involuntary if the petition is filed by creditors or employees. On the other hand, insolvency proceedings may be considered voluntary if the petition is filed by a legal representative or shareholders of the company. Furthermore, it is possible to classify people filing a bankruptcy petition into two groups, namely, a group of people having rights and a group of people having obligations to file a bankruptcy petition.

Financial restructuring and reorganisation are measures taken to help the business operation of a company recover during insolvency proceedings. To this end, there has not been any formal judicial or statutory financial restructuring during insolvency proceedings under the current law of Vietnam. The Bankruptcy Law provides that, at a meeting of creditors on the insolvent situation of a company, those creditors will decide whether the company should carry out any recovery measures.

Receivership in insolvency proceedings is decided though a formal judicial decision of a judge having jurisdiction over the bankruptcy case. As required by law, the judge shall appoint the Receiver. The applicant filing the bankruptcy petition can recommend a Receiver, but the final decision remains with the judge. The Bankruptcy Law allows replacement of the appointed Receiver by the judge in certain circumstances.

2.3 Obligation to Commence Formal Insolvency Proceedings

The following persons have the obligation to file bankruptcy petitions:

- owner of a private company;
- chairman of the board of management of a joint stock company;
- chairman of the members' council of a limited liability company with two or more members;
- owner of a one-member limited liability company;
- unlimited liability partner of a partnership company; and
- legal representative of a company. For clarification, the legal concept of legal representative is in many ways similar to the chief executive officer (CEO) or any director of the board of directors in Western or US companies.

One of the above is obliged to submit a bankruptcy petition for the company if the company has failed to repay a debt within three months of the due date. The failure of these persons to file a bankruptcy petition shall be subject to a fine from VND1 million (about USD43) to VND3 million (about USD130). Apart from these administrative penalties, the current law does not provide other legal ground on which these persons shall bear personal responsibility for losses caused by a failure to file.

2.4 Procedural Options

In a situation where the filing of a bankruptcy petition is a must, the Bankruptcy Law does not provide any alternative to bankruptcy proceedings.

2.5 Commencing Involuntary Proceedings

A creditor, an employee, a shareholder and/or a trade union could file a bankruptcy petition against the relevant company in the following circumstances:

- an unsecured or partially secured creditor has the right to file a bankruptcy petition upon the expiry of three months from the due date of a debt which the company has failed to repay;
- employees or representatives of the trade union have the right to file a bankruptcy petition upon the expiry of three months from the due date of wages and other debts which the company has failed to pay employees; or
- a shareholder or group of shareholders owning 20% or more of ordinary shares for at least six consecutive months has the right to file a bankruptcy petition when their shareholding company becomes insolvent. A shareholder or a group of shareholders owning less than 20% of ordinary shares for at least six consecutive months also has the right to file a bankruptcy petition when their shareholding company becomes insolvent, if it is so stipulated in the charter of the company.

In order to commence an insolvency proceeding, the above persons shall file a bankruptcy petition and the supporting documents to a court having jurisdiction over the bankruptcy case.

2.6 Requirement for Insolvency

"Insolvent status" is the sole legal ground for filing a bankruptcy petition. "Insolvent status" is defined as a situation in which an enterprise has failed to perform any obligation to repay its due debt for three months from the due date. The Judges' Council of the Supreme Court further clarifies that a debt becomes due when it meets all the following conditions:

- it is an unsecured debt or partly secured debt;
- it is expressly recognised by relevant parties;
- it is evidenced by adequate documents; and
- it is free of dispute.

2.7 Specific Statutory Restructuring and Insolvency Regimes

Insolvency Proceedings of a Credit Institution

The Bankruptcy Law and the Law on Credit Institutions provide a particular regime applicable to the insolvency proceedings of credit institutions. These commence after the credit institution has gone through the special control procedure as required by the Law on Credit Institutions. The following is the description of the special control procedure.

Step 1: Decision on placing a credit institution under special control

If a credit institution is in danger of becoming insolvent or in danger of being unable to meet its payment(s), the Credit Institution shall report this actual status to the State Bank of Vietnam (SBV). The SBV shall consider and decide whether to place the credit institution under special control and establish a Special Controlling Board to control the operation of the credit institution.

Step 2: Assessment of the actual status of the credit institution upon the request of the Special Controlling Board

The purpose of this is to assess the financial status, the actual status of activities/operation, and the business of the credit institution.

Step 3: Proposal on plans for the credit institution

Based on the results of the assessment in step 2, the Special Controlling Board shall propose a plan to the SBV on how to deal with the credit institution. The Law on Credit Institutions provides five different plans to deal with a credit institution under special control, of which bankruptcy is one plan.

Step 4: Application of assisting measures

The SBV decides to apply one or more of the assisting measures provided by the Law on Credit Institutions. These include:

- sale of bad debts;
- provision of special loans from the SBV at preferential interest rates as low as 0%;
- exemption or reduction of interest on refinanced loans or special loans from the SBV; and
- receipt of monetary deposits or loans from the assisting credit institutions at a preferential interest rate.

Step 5: Implementation of the selected plan

The government, the prime minister and the SBV are competent authorities in charge of making a final decision on the selected plan. If the selected plan is bankruptcy, upon the issuance of a decision in principle by the government on the bankruptcy plan, the Special Controlling Board shall prepare a bankruptcy plan. This plan shall be reviewed by the SBV and approved by the government before being carried out by the credit institution.

Step 6: Commencement of the insolvency proceeding A bankruptcy petition can be submitted by:

- people with the right to file a bankruptcy petition:
- the credit institution; or
- the SBV (only in a case where the credit institution does not file the bankruptcy petition).

The judge will immediately apply measures to liquidate the assets of the credit institution without carrying out the steps of a standard insolvency procedure applicable to companies, for example, organising a creditors' meeting.

Except for the above particular insolvency regime applicable to credit institutions, the bankruptcy of all other companies, including investment firms or insurance companies, shall comply with the standard insolvency proceedings.

3. Out-of-court Restructurings and Consensual Workouts

3.1 Restructuring Market Participants

The law of Vietnam does not have a legal framework for out-of-court restructuring and consensual workouts in insolvency proceedings. The Bankruptcy Law, however, does not prohibit out-of-court restructurings and consensual workouts during insolvency proceedings. Market participants of the out-of-court restructurings and consensual workouts include, among others, creditors named in the list of creditors of the insolvent company and new money investors (who invest new money in the insolvent company as discussed in **3.3 New Money**).

3.2 Consensual Restructuring and Workout Processes

Consensual restructuring and workout during an insolvency proceeding can be conducted in the form of, among others, an offset of obligations or a restructuring of debts.

Creditors and the insolvent company may set off obligations against those contracts that were entered into by the insolvent company before the commencement of the insolvency proceedings. Such arrangement is subject to the approval of the Receiver. In addition, the insolvent company and its creditors can negotiate to reduce, write off, or reschedule debts. This restructuring of debts forms part of the plan for business recovery, which must be approved by the creditors at the creditors' meeting.

The Bankruptcy Law does not provide guidelines or frameworks for implementing out-of-court restructurings and consensual workouts. In practice, such arrangements depend on the negotiations of the parties and restructuring market participants.

Credit institutions tend not to be supportive towards insolvent companies.

A standstill can be a statutory standstill or a voluntary standstill. For the statutory standstill, as required by the Bankruptcy Law, the following asset obligations of the insolvent company shall be temporarily suspended:

- civil judicial decisions of assets to which the insolvent company is the obligor, except for when the asset obligation of the insolvent company is to compensate for others' life, health, honour, or to pay wages to its employees;
- realisation of the security property of the insolvent company, except for when the security property is subject to the risk of being destroyed or a considerable decrease in value; and
- payment of the interests on any debts.

Concerning voluntary standstill, while the recovery plan is being prepared, the insolvent company may have to work with creditors to write off or reschedule due debts. These agreements depend on negotiations between the insolvent company and its creditors.

3.3 New Money

In the recovery plan, the insolvent company can identify resources of new money. New money is typically injected by:

- raising capital (either in the form of equity capital or borrowing loans); and
- the sale of shares to creditors and other persons.

New money investors will obtain super-priority liens (ie, over financial obligations to the state and unsecured debts) in the statutory process if such new money is to serve the purpose of the business recovery of the company. See **5.8 Statutory Waterfall of Claims** for further details.

3.4 Duties on Creditors

Basic principles of the Civil Code in Vietnam apply to parties in civil relationships and cover permissible restructuring/workout strategies, conduct, negotiations, transactions and outcomes between creditors and the insolvent company. Therefore, during the implementation of out-of-court restructurings and consensual workouts, the creditors have the following duties:

- to respect the free right to establish, perform and terminate rights and obligations on the basis of free and voluntary commitments and agreements of the insolvent company;
- to establish, perform, and terminate their rights and obligations with goodwill and honesty; and

• to respect and not infringe on national or ethnic interest, public interest, or the legitimate rights and interest of other people.

Furthermore, creditors have to comply with regulations governing credit relations, such as the regulations on interest rates.

3.5 Out-of-court Financial Restructuring or Workout

In Vietnam, credit agreements do not typically contain terms permitting a majority or super-majority of lenders to bind dissenting lenders to changed credit agreement terms.

The Bankruptcy Law implies the existence of a cram-down mechanism in insolvency proceedings. The following is a description of how this mechanism fits into these proceedings.

Under the Bankruptcy Law, at the creditors' meeting, creditors vote to decide on the implementation of measures to recover the business operation of the insolvent company. If the creditors pass the resolution on a recovery plan, the company shall formulate a detailed recovery plan, which is subject to the further approval of the creditors at another creditors' meeting. The recovery plan shall specify the recovery measures applied, the time limit and a plan for repayment of debts.

As part of the recovery plan, the insolvent company may negotiate and co-ordinate with its creditors to reduce, write off or reschedule its debts. Legally speaking, the judge and Receiver may review and give comments on these arrangements. However, the creditors reserve the final right to approve the recovery plan. The resolution on a recovery plan will only be approved upon satisfaction of the following two conditions:

- creditors who attend or deem to attend the creditors' meeting represent at least 51% of the total unsecured debts; and
- the number of creditors voting for the recovery plan:
 - (a) accounts for more than 50% of the total unsecured creditors attending the meeting; and
 - (b) represents at least 65% of the total value of the unsecured debts.

Once the creditors approve the resolution on the recovery plan, this solution shall be binding on all the creditors, including:

- those creditors taking part in the financial restructuring or workout;
- those creditors who are not part of the financial restructuring or workout; and

• those creditors who voted against the financial restructuring or workout.

4. Secured Creditor Rights and Remedies

4.1 Liens/Security

The Civil Code provides nine types of security for the performance of obligations, namely:

- pledge of property;
- mortgage of property;
- performance bond;
- security deposit;
- escrow deposit;
- reserve of ownership rights;
- guarantee;
- fidelity guarantees; and
- retention of property.

Among these securities, the pledge of property, mortgage of property, guarantee and fidelity guarantees are securities which may be taken by secured creditors.

4.2 Rights and Remedies

A secured creditor has the right to realise the security property in accordance with the agreement between the parties. In the absence of an agreement on how to realise the security property, the secured creditor can contract an asset auctioneer to sell the property by auction. If the value of the property is not enough to repay the debt, the unpaid part of the debt shall be treated as an unsecured debt.

Partly-secured creditors have the right to request the court to issue a decision imposing one or more temporary emergency measures to preserve the property of the insolvent company.

4.3 Typical Timelines

In insolvency proceedings, secured debts are divided into:

- secured debts established before the date on which the court accepted jurisdiction over the bankruptcy petition (Acceptance Date);
- secured debts established after the Acceptance Date; and
- secured debts established after the issuance of the decision to commence insolvency proceedings (Insolvency Commencement Decision).

In principle, secured creditors have the right of priority to be repaid with the proceeds obtained from the realisation of the security property. However, this priority right is subject to the following conditions of the Bankruptcy Law:

- after the Acceptance Date, the realisation of property to perform obligations shall be temporarily suspended until the court commences the insolvency proceeding;
- after the Insolvency Commencement Decision, the realisation of property can be conducted if such property is not required to carry out the recovery plan or the recovery plan is not carried out. If the property is going to be used to carry out the recovery plan, the suspension of the realisation of the property remains at least until the next creditors' meeting;
- for security agreements that have not become due, before the court declares a company bankrupt, the court shall suspend all such agreements and settle the secured loans; and
- after the Insolvency Commencement Decision, the Receiver will supervise and approve loan agreements between the company and creditors. The realisation of the security property under such loan agreements should follow the standard procedure and not be subject to any restriction of the Bankruptcy Law.

The Bankruptcy Law says nothing about how to deal with security properties which are created during the period from the Acceptance Date to the Insolvency Commencement Date.

The distribution of the proceeds of the security properties shall comply with the order of priority discussed in **5.8 Stat-utory Waterfall of Claims**.

4.4 Foreign Secured Creditors

The Bankruptcy Law does not contain provisions or procedures that apply specifically to foreign secured creditors.

4.5 Special Procedural Protections and Rights

In insolvency proceedings, a secured creditor has the following special rights:

- the right to realise the security property to recover due debt, providing the implementation of this right is subject to the conditions of the Bankruptcy Law as discussed in **4.3 Typical Timelines**;
- the right to realise security property to recover undue debts before the company is declared bankrupt; and
- the right to refuse the use of the security property in the recovery plan of the insolvent company.

It is noted that secured creditors are allowed to attend creditors' meeting. However, votes of secured creditors are not counted as acceptance when voting to pass resolutions of creditors' meetings. To be able to vote, a secured creditor must waive its priority right and become an unsecured creditor.

5. Unsecured Creditor Rights, Remedies and Priorities

5.1 Differing Rights and Priorities

Unsecured creditors have the right to:

- file a bankruptcy petition;
- request the court to issue a decision imposing one or more temporary emergency measures to preserve the assets of the company; and
- vote on resolutions of the creditors' meetings.

Secured creditors are not entitled to such rights. However, secured creditors have priority over unsecured creditors as to secured property. If the value of the property is more than the amount of the secured debt, the difference will be incorporated into the value of the insolvent company, and paid towards unsecured debts after the company is declared bankrupt.

5.2 Unsecured Trade Creditors

In insolvency proceedings, upon satisfaction of all the following conditions, an unsecured trade creditor, as seller, can recover goods sold to a purchaser that has been declared insolvent if:

- the seller has dispatched the goods to the buyer, but the payment for such goods has not been made; and
- the purchaser has not yet received the goods.

Furthermore, if a contract between an insolvent company and an unsecured trade creditor is suspended, the unsecured trade creditor shall have the right to request the insolvent company to return the asset if that asset still exists in the parcel of the company's assets.

If unsecured trade creditors cannot claim back their goods or assets, they will be treated as unsecured creditors.

5.3 Rights and Remedies for Unsecured Creditors See **5.1 Differing Rights and Priorities** for the rights of unsecured creditors.

After a company is declared bankrupt, its properties shall be distributed in compliance with the priority order discussed in **5.8 Statutory Waterfall of Claims**. If the value of the properties is not sufficient to make all the payments in full, each of the unsecured creditors shall be paid the corresponding proportion of the amount owed to them.

5.4 Pre-judgment Attachments

To preserve the assets of the insolvent company, the court, upon a proper request from an unsecured creditor (see below), may decide to apply one or more temporary emergency measures, including:

- attachment and sealing up of assets of the company;
- freezing the bank accounts of the company;
- freezing the assets at a depository;
- sealing up of stores or funds; or
- prohibiting the transfer of the company's assets.

The request for temporary emergency measures must be in writing and include the following:

- date, month and year;
- the name and address of the unsecured creditor;
- the name and address of the company on which the imposition of temporary emergency measures is requested;
- the reasons for the imposition of temporary emergency measures; and
- the temporary emergency measures required to be imposed and specific requirements.

5.5 Timeline for Enforcing an Unsecured Claim

As required by law, unsecured creditors shall submit their requests for payment to the Receiver within 30 days from the commencement of insolvency proceedings. According to the timeline provided by the Bankruptcy Law, it will take the Receiver around two months from the commencement date to issue a final list of creditors. Unsecured claims will be settled at one of the following two stages:

- after the company has successfully implemented the recovery plan; or
- when the company is declared bankrupt by the court.

The specific timeline varies from case to case, depending on how long it takes to implement the recovery plan, the time spent by the court handling the bankruptcy case, and how long it takes to liquidate the assets.

5.6 Bespoke Rights and Remedies for Landlords

The Bankruptcy Law does not make any special provisions for landlords. However, it does provide regulation applicable to the lease of the property used by the insolvent company in its business operation. In particular, within ten working days from the date of receiving the decision declaring bankruptcy, the owner of the assets must present papers proving their ownership, as well as the lease contract, to the enforcement authority to get its property back.

It is important to note that the current law of Vietnam does not recognise the private ownership of land. The land belongs to the people, with the state acting as the owners' representative and manager of the land. If a company leases land from the state, the state may resume use of the land if the company is declared bankrupt. The Land Law sets out detailed procedures and conditions for land resumption.

5.7 Foreign Creditors

There is no special procedure or protection that applies separately and specifically to foreign creditors.

5.8 Statutory Waterfall of Claims

The insolvency proceeding may involve the following priority orders of payment:

Distributing the Value of Security Properties

The first is the order to distribute the value of the security properties to secured creditors. If more than one secured creditor is taking lien/security on the same security property, the order of priority for payment between the jointly secured creditors is as follows:

- creditors with perfected security interests priority is based on date, starting with the first to perfect; and
- creditors with unperfected security interests priority is based on date, starting with the first to attach.

The above order, however, may be changed if jointly secured parties reach an agreement to change the priority between themselves. The subrogatee of a right-to-priority payment shall only be entitled to priority payment within the scope of the security of the subrogator.

Distributing Assets When a Company is Bankrupt The second is the order to distribute assets when a company is declared bankrupt. The assets of the company shall be distributed in the following order:

- bankruptcy costs;
- unpaid wages, severance allowances and other amounts to employees as provided by the law, employment contracts, and collective labour agreements;
- debts arising after the commencement of insolvency proceedings (new money) to help the business of the company recover;
- financial obligations to the state, unsecured debts of creditors named in the list of creditors, secured debts that remain unpaid due to the value of assets being insufficient to repay them; and
- owners, shareholders or members of the company.

Distributing Assets When a Credit Institution is Bankrupt

The third is the order to distribute assets when a credit institution is declared bankrupt. The properties of the credit institution shall be distributed in the following order:

- any bankruptcy costs;
- unpaid wages, severance allowances and other amounts to employees as provided by the law, employment contracts, and collective labour agreements;

- deposits, and amounts payable by deposit insurance institutions to people who deposit money at the bankrupt credit institution;
- financial obligations to the state, unsecured debts of creditors named in the list of creditors, secured debts that remain unpaid due to the value of assets being insufficient to repay them; and
- owners, members or shareholders of the credit institution.

5.9 Priority Claims in Restructuring and Insolvency Proceedings

The settlement of claims shall comply, without exception, with the order of priority as discussed in **5.8 Statutory** Waterfall of Claims.

6. Statutory Restructurings, Rehabilitations and Reorganisations

6.1 Statutory Process for a Financial Restructuring/ Reorganisation

As mentioned in **3. Out-of-court Restructurings and Consensual Workouts**, there is no specific legal framework for out-of-court restructurings and consensual workouts in insolvency proceedings under the current laws of Vietnam. The Bankruptcy Law, however, implies that the insolvent company and its creditors have the right to negotiate and conduct financial restructurings or reorganisations – as part of a recovery plan – provided that such restructurings and reorganisations do not violate the principles of the Civil Code, as discussed in **3.4 Duties on Creditors**.

Under the Bankruptcy Law, within 30 days of the creditors' meeting deciding that the insolvent company may be recoverable, the insolvent company must set up a recovery plan and send it to the chief judge, creditors and the Receiver for their opinions. Such a recovery plan is subject to the approval of the creditors in the next creditors' meeting. The time limit for implementation of the recovery plan will be decided by a resolution of the creditors' meeting. If the creditors' meeting fails to specify a time limit, the maximum term for the insolvent company to implement the recovery plan is three years, dated from the resolution of the creditors' meeting approving the business recovery plan.

The recovery plan can only be formulated and presented by the insolvent company. There is no limitation on:

- measures to be used to recover the business of the company (provided that such measures are not contrary to the current laws of Vietnam); and
- how far the insolvent company can go in its negotiations with its creditors to build a workable recovery plan (provided that such measures are not contrary to the current laws of Vietnam).

All these contents will depend on negotiations between the company and its creditors. As discussed in **3.5 Out-of-court Financial Restructuring or Workout**, this recovery plan is subject to the approval of the creditors' meeting. Once the resolution on the recovery plan is passed, it will be binding on all creditors.

6.2 Position of the Company

As discussed in **6.1 Statutory Process for a Financial Restructuring/Reorganisation**, the company plays a proactive role in proposing financial restructuring or reorganization during insolvency proceedings. Once the creditors' meeting approves the recovery plan (which includes contents on the financial restructuring or reorganisation), the company shall implement and report on its implementation of the recovery plan to the Receiver every six months. Any modification or amendment of the recovery plan shall be subject to the approval of the creditors' meeting with the same voting mechanisms as described in **3.5 Out-of-court Financial Restructuring or Workout**.

6.3 Roles of Creditors

The Bankruptcy Law does not prohibit creditors from negotiating with the insolvent company to formulate a workable recovery plan for the company. Two key roles of creditors at this stage are as a decision-maker and a supervisor.

Unsecured creditors have the right to make a final decision (via voting mechanism) to implement or not implement the recovery plan, while the secured creditors have the right to give consent to or refuse the use of secured properties for the recovery plan. The creditors also have the right to supervise the implementation of the recovery plan by the insolvent company.

6.4 Claims of Dissenting Creditors

The recovery plan is binding on all creditors, including dissenting creditors. The claims of dissenting creditors will be resolved or rescheduled according to the approved recovery plan.

6.5 Trading of Claims Against a Company

In general, property rights (such as the right to demand payment or the right to be compensated) are transferable. The Bankruptcy Law does not prohibit the trading of claims against an insolvent company. However, the issue here is that the Bankruptcy Law is silent on the procedure to be used to amend or update the list of creditors after this list is finalised by the judge. See **7.1 Types of Voluntary/Involuntary Proceedings** for the procedure to formulate and finalise the list of creditors. This means that if trading is continued after the list of creditors has been completed, the names of assignees may not be updated in the list of creditors.

As a consequence, assignees cannot:

- attend the creditors' meeting;
- exercise their voting right; or
- receive distributions from the company's properties.

6.6 Use of a Restructuring Procedure to Reorganise a Corporate Group

Under the laws of Vietnam, a corporate group is not a type of business entity and does not have legal status. The current laws on bankruptcy do not provide a special or separate procedure applicable to the restructuring or reorganisation of a corporate group during insolvency proceedings.

6.7 Restrictions on a Company's Use of or Sale of Its Assets

The Bankruptcy Law sets out the following restrictions on the insolvent company's use or sale of its assets after the commencement of insolvency proceedings:

• the insolvent company is prohibited from:

- (a) concealing, disposing of or donating any of the company's assets;
- (b) making payment of unsecured debts (except for unsecured debts arising after the commencement of insolvency proceedings, and wages owed to employees);
- (c) abandoning any right to claim a debt; and/or
- (d) converting unsecured debts into secured debts; and
- without prior consent from the Receiver, the insolvent company is not allowed to carry out:
 - (a) activities in connection with borrowing or the pledge, mortgage, guarantee, purchase, sale, assignment, or leasing of assets;
 - (b) sale or conversion of shares;
 - (c) transfer of the ownership rights in any assets;
 - (d) termination of performance of an effective contract; and/or
 - (e) payment of debts arising after the commencement of insolvency proceedings, payment of wages to employees.

6.8 Asset Disposition and Related Procedures

After the issuance of the decision declaring bankruptcy, the assets of the bankrupt company can be sold at auction or by private sale in accordance with the decision declaring bankruptcy issued by the court. According to the Bankruptcy Law, different procedures will be applied to the sale of assets depending on their value, specifically:

- the Receiver can organise private sales to sell:
 - (a) assets with a value of less than VND2 million (about USD87); or
 - (b) assets in danger of being destroyed or significantly decreasing in value;
- the Receiver shall contract with a licensed auctioneer to sell movable assets where the value of each asset is less than VND10 million per asset (about USD435). The

organisation of such an auction does not need to comply with the laws on auctions; and

- the Receiver shall contract with a licensed auctioneer to sell:
 - (a) movable assets where the value of each asset is at least VND10 million (about USD435); and
 - (b) immovable assets. The organisation of such auction shall comply with the laws on auctions. The laws on auctions provide a statutory procedure to which the auction shall comply.

The appointed enforcement officer shall open a bank account in the name of the competent enforcement office. All amounts of money collected from the sale of the company's assets shall be deposited into this account. After the asset liquidation of the bankrupt company is complete, the enforcement officer will implement the plan for the distribution of assets in accordance with the decision declaring the company bankrupt.

6.9 Secured Creditor Liens and Security Arrangements

See **4.3 Typical Timelines** for further details on how security agreements and secured properties are resolved in insolvency proceedings.

6.10 Priority New Money

New funds injected into the company have a priority right in the reorganisation procedure. See **3.3 New Money** and **7.4 Priority New Money During the Statutory Process** for further details.

6.11 Determining the Value of Claims and Creditors

The Receiver is responsible for preparing the list of creditors with specific amounts owed, based on requests for payment submitted by creditors. In each request for payment, the creditor must provide documents evidencing the claimed amount. The creditors and the insolvent company have the right to challenge this list of creditors. If the challenge is reasonable and supported by adequate evidence, the judge has the right to amend the list of creditors.

6.12 Restructuring or Reorganisation Agreement

There is no fairness or similar equitable test applicable to a restructuring or reorganisation agreement among creditors. However, negotiations among relevant parties shall be fair and made in good faith because, under the Civil Code, parties must respect and not infringe national or ethnic interest, the public interest, or legitimate rights and interests of other people. Failure to comply with this principle of the Civil Code will serve as a ground to declare an agreement invalid.

In principle, no additional approval is required for the enforcement and validity of a restructuring or reorganisation agreement among creditors. However, to ensure such agreement is binding to all relevant parties, such as the insolvent company, employees, shareholders and dissenting creditors, such agreement among creditors should be reflected in the recovery plan and approved at the creditors' meeting.

6.13 Non-debtor Parties

After the judge issues a decision declaring a company bankrupt, non-debtor parties are automatically released from liabilities to the company's creditors, except if they are:

- the owner of the private enterprise; or
- the partners in a partnership.

6.14 Rights of Set-off

After the commencement of insolvency proceedings, creditors and the insolvent company are allowed to set off claims arising from contracts entered into before the commencement of insolvency proceedings. This set-off is subject to the approval of the Receiver, and any set-off conducted without prior consent from the Receiver shall be invalid. The Civil Code provides a list of obligations which cannot be set off, eg, obligations that are in dispute.

6.15 Failure to Observe the Terms of Agreements

If the company fails to observe the recovery plan, the judge has the right to issue a decision declaring the company bankrupt.

6.16 Existing Equity Owners

As mentioned in **5.8 Statutory Waterfall of Claims**, after fulfilling all financial obligations, if there is any residual value of the assets of the company, such value shall be distributed to equity owners in proportion to each owner's stake. Equity owners include the owner of a private company, the owner of a single-member limited liability company, the members of a multiple-member limited liability company, the shareholders of a joint-stock company, or the partners in a partnership.

7. Statutory Insolvency and Liquidation Proceedings

7.1 Types of Voluntary/Involuntary Proceedings

The Bankruptcy Law of Vietnam imposes uniform insolvency proceedings, which apply to both voluntary and involuntary insolvency, as follows:

Step 1: Filing the Bankruptcy Petition and Acceptance of the Bankruptcy Petition

After filing the bankruptcy petition, the insolvent company and its creditors may request a postponement from the court so the parties can negotiate the withdrawal of the bankruptcy petition. The petitioner must pay an advance on the bankruptcy fees as determined by the court, except in cases where the advance on the bankruptcy fees is exempted. Step 2: Decision for Commencement of Insolvency Proceedings

Within 30 days after the acceptance of the bankruptcy petition, the judge must issue a decision to commence or not commence the insolvency proceedings against the insolvent company.

Step 3: Appointment of Receiver, Valuation of Assets and Listing of Creditors and Debtors

The judge must appoint the Receiver. The insolvent company must conduct the asset inventory and valuation within 30 days after receiving the decision to commence insolvency proceedings, although this may be extended. The Receiver must make a list of the creditors and debtors, collect the documents related to the debts, and publicly post such list.

Step 4: Convening the Creditors' Meeting

Within 20 days of the completion of the list of creditors or the asset inventory and valuation, whichever is earlier, the judge must convene the first meeting of the creditors to discuss the insolvent company's situation. A creditors' meeting requires a quorum of creditors representing at least 51% of the unsecured debts. To be binding on all the creditors, a decision of the creditors' meeting requires the consent of creditors representing at least 65% of the unsecured debts of the company.

Step 5: Resolution on Recovery Plan See 6.1 Statutory Process for a Financial Restructuring/ Reorganisation.

Step 6: Declaration of Bankruptcy The court will declare the company's bankruptcy in the following cases:

- the creditors fail to convene the creditors' meeting;
- the creditors' meeting fails to approve their resolution;
 the creditors' meeting fails to approve or pass the resolution on the business recovery plan;
- the creditors' meeting requests that the insolvent company be declared bankrupt;
- no business recovery plan is duly proposed or approved, or the company fails to implement the business recovery plan;
- the company in bankruptcy has no money or other assets to pay the bankruptcy fee or advance the bankruptcy charges where the petitioner is the company; and
- after the acceptance of the bankruptcy petition, the company is unable to pay the bankruptcy charges.

Step 7: Liquidation of Assets

Upon the issuance of the decision declaring bankruptcy, the Receiver liquidates the assets of the insolvent company, and the civil judicial enforcement office distributes the assets in accordance with the decision declaring bankruptcy.

7.2 Distressed Disposals

After the commencement of insolvency proceedings, the sale of assets of the insolvent company is subject to the prior consent of the Receiver, who reports their consent, or refusal to give consent, to the judge.

After the judge issues the decision recognising the resolution of the creditors' meeting to approve the plan for recovery of the business operations of the insolvent company, the sale of assets must be conducted according to the approved recovery plan and under the supervision of the Receiver and creditors.

In respect of secured assets, if the secured assets are not needed for recovery of the business operations in accordance with the plan, or the insolvent company does not carry out the plan for recovery of business operations, then the enforcement of secured assets (such as their sale) will be subject to the time stated in a secured contract which has become due. Furthermore, if the secured assets are subject to the risk of destruction or a considerable decrease in value, the Receiver may recommend that the judge permit the immediate enforcement of the assets.

Normally, a purchaser acquiring assets from an insolvent company will have good title "free and clear" of claims over the assets unless:

- the assets have been used to secure other debts;
- the sale of assets falls within the scope of forbidden transactions; or
- the sale of assets is subject to the approval of the Receiver, and the insolvent company fails to get this approval.

Good-faith purchasers will have good title "free and clear" of claims over assets bought at auction.

The laws and regulations of Vietnam on bankruptcy and auction sales do not recognise the legal concepts of "stalking horse" bidding or credit bidding.

7.3 Failure to Observe Terms of Agreed/Statutory Plan

In a case where the insolvent company fails to carry out the business recovery plan which has been approved by the creditors' meeting, the court will declare the company bankrupt.

7.4 Priority New Money During the Statutory Process

New funds can be injected into the insolvent company for the purpose of helping the business operation recover and can be secured by the assets of the insolvent company if this is permitted under the business recovery plan duly approved by the creditors' meeting.

7.5 Insolvency Proceedings to Liquidate a Corporate Group

The laws of Vietnam on bankruptcy say nothing about insolvency proceedings to liquidate a corporate group.

7.6 Organisation of Creditors or Committees

The creditors' meeting is allowed to appoint a representative board of creditors composed of three to five members. The members of the representative board of creditors are elected by the creditors at the creditors' meeting.

It is the duty of the representative board of creditors, on behalf of all the creditors, to supervise the implementation of the resolutions of the creditors' meeting and request that the Receiver implement such resolutions. If the Receiver fails to carry out this request, the representative board of creditors has the right to report such failure in writing to the judge of the people's court responsible for resolving the insolvency proceedings.

7.7 Use or Sale of Company Assets During Insolvency Proceedings

See **7.2 Distressed Disposals** for a detailed discussion about the sale of assets of the insolvent company as part of insolvency proceedings.

8. International/Cross-border Issues and Processes

8.1 Recognition or Relief in Connection with Overseas Proceedings

The recognition and enforcement of a decision on a resolution of bankruptcy issued by a foreign court shall be recognised and implemented in accordance with mutual judicial assistance agreements to which Vietnam is a contracting party, and other regulations on mutual judicial assistance.

8.2 Co-ordination in Cross-border Cases

Vietnam has not entered into any protocols or other agreements with foreign courts to co-ordinate proceedings.

8.3 Rules, Standards and Guidelines

Based on the principles of the Civil Code and the Bankruptcy Law, the people's courts of Vietnam have the exclusive right to resolve bankruptcy cases of companies established under the laws of Vietnam.

8.4 Foreign Creditors

Foreign creditors are dealt with in the same way as other creditors, in accordance with the Bankruptcy Law.

9. Trustees/Receivers/Statutory Officers

9.1 Types of Statutory Officers

By law, the following statutory officers are involved in insolvency proceedings:

- the judge of the people's court;
- the Receiver; and
- other statutory officers (such as the officers of the people's procuracy and civil judicial enforcement office).

9.2 Statutory Roles, Rights and Responsibilities of Officers

By law, the roles, rights and responsibilities of the statutory officers mentioned in **9.1 Types of Statutory Officers** are as follows:

The Judge

The judge, having the authority to resolve the insolvency proceedings, has the following duties and powers, among others:

- verifying and collecting documents and evidence in connection with a bankruptcy petition, if necessary;
- making the decision to commence or not to commence insolvency proceedings;
- making the decision to appoint or replace the Receiver;
- supervising the activities of the Receiver;
- making decisions on the sale of the assets of an insolvent company after commencing insolvency proceedings to cover bankruptcy costs;
- organising creditors' meetings;
- making the decision to recognise the resolution of the creditors' meeting on the method of recovering the business operations; and
- deciding whether to declare an insolvent company bankrupt.

The Receiver

The Receiver has the following rights and obligations, among others:

- management of the assets, supervision of the business operations and liquidation of the assets of an insolvent company, including but not limited to preserving assets; preventing the sale or transfer of assets without the permission of a judge; preventing the dispersal of assets; maximising the value of the assets of the insolvent enterprise or co-operative when selling or liquidating the assets; organising the valuation and liquidation of assets in accordance with the Bankruptcy Law;
- reporting on the status of assets, debts and the operation of the insolvent company, and participating in developing the plan to recover the business operations of the insolvent company;

• recommending the judge to perform the following tasks: collect documents and evidence; declare a transaction invalid and decide to recover the assets of the insolvent enterprise which have been sold or transferred illegally; issue an interlocutory injunction or administrative penalty measures; transfer the file to a competent criminal authority in accordance with the law.

Other Statutory Officers

The chief prosecutor of a people's procuracy and a prosecutor of such procuracy oversee compliance with the law in the course of resolving insolvency proceedings, while the head of the civil judicial enforcement office, or an officer of such enforcement office, carries out the decisions of the people's court in respect of insolvency proceedings.

9.3 Selection of Officers

The Court

The chief justice of the people's court, having jurisdiction over a bankruptcy petition, has the right to form a board of judges to consider and resolve the bankruptcy petition. The chief justice may replace a selected judge with another judge in some specific circumstances, for example, in a case where there are clear grounds that the judge is biased in the performance of their duties.

The Receiver

The board of judges has the right to appoint a Receiver. The person appointed must have sufficient qualifications and there must be no conflict of interest. The Receiver can be replaced in certain situations, for example, if there is proof that the Receiver is not objective in performing their duties. The following persons can serve as a Receiver:

- an individual having full civil capacity, good ethics and a sense of responsibility who is upstanding, honest and unbiased and who holds a practising certificate as an asset management officer, issued by the Ministry of Justice of Vietnam; or
- an asset managing and liquidating enterprise, including:
 - (a) a partnership with at least two unlimited liability partners being asset management officers and with its general director or director being an asset management officer; or
 - (b) a private enterprise with its owner being both an asset management officer and, concurrently, its director.

10. Advisers and Their Roles

10.1 Typical Advisers Employed

The laws of Vietnam on bankruptcy do not impose any specific regulations on the employment of professional advisers in restructuring and insolvency proceedings. However, the Bankruptcy Law generally provides that the participants in insolvency proceedings (including, among others, creditors, the insolvent company, employees, shareholders, a group of shareholders and debtors) will have the right to "ask another person" to protect their rights and obligations. Furthermore, the Bankruptcy Law does not prohibit the parties from entering into service contracts with professional advisers during restructuring and insolvency proceedings.

In practice, the involvement of professional advisers in restructuring and insolvency proceedings is subject to the decision of the participants in that particular restructuring and insolvency proceeding, which might vary on a case-bycase basis. Normally, the parties participating/involved in restructuring and insolvency proceedings will seek advice from lawyers, accountants and financial advisers.

10.2 Compensation of Advisers

As discussed in **10.1 Typical Advisers Employed**, the laws of Vietnam on bankruptcy do not impose any specific regulations on the employment of professional advisers in restructuring and insolvency proceedings, or on how their compensation will be paid.

10.3 Authorisation and Judicial Approval

As discussed in **10.1 Typical Advisers Employed**, the laws of Vietnam on bankruptcy do not impose any specific regulations on issues regarding the employment of professional advisers in restructuring and insolvency proceedings, or whether any authorisation or judicial approval is required for such employment.

10.4 Duties and Responsibilities

As discussed in **10.1 Typical Advisers Employed**, the laws of Vietnam on bankruptcy do not impose any specific regulations on the employment of professional advisers in restructuring and insolvency proceedings, or on the duties and responsibilities of such professional advisers.

Where professional advice is provided on the basis of a service contract, such professional advisers owe duties and responsibilities to the party with whom they entered into the contract.

11. Mediations/Arbitrations

11.1 Utilisation of Mediation/Arbitration

In Vietnam, arbitrations or commercial mediations are often utilised where there are contractual disputes, provided that the disputing parties have an arbitration or mediation agreement under the law. Arbitrations or mediations are not utilised in Vietnam in restructuring, liquidation, insolvency or administration matters. Disputing parties tend to rely on arbitration where they have contractual disputes. Commercial mediation, on the other hand, is quite a new mechanism in Vietnam and mediation is not, therefore, as commonly used for dispute resolution as arbitration is.

The Law on Commercial Arbitration does not forbid disputes arising during insolvency proceedings from being brought before arbitrators. However, the Bankruptcy Law sets out several requirements that may restrict the involvement of arbitrators in resolving such disputes.

The Bankruptcy Law requires that after the commencement of insolvency proceedings, all pending disputes handled by the arbitrator must be suspended and transferred to the court. Also, disputes on assets arising during insolvency proceedings and before the declaration of bankruptcy, must be brought to court. These restrictions only apply to disputes over asset obligations in which the insolvent company is a concerned party.

11.2 Mandatory Arbitration or Mediation

The court has no authority to order mandatory arbitration or mediation in judicially supervised insolvency or restructuring proceedings.

11.3 Pre-insolvency Agreements to Arbitrate

A pre-insolvency arbitration agreement is enforceable in the following circumstances:

- the court decides not to commence insolvency proceedings. Under the Bankruptcy Law, within five days from the court's acceptance of the bankruptcy petition, the arbitrator must temporarily suspend the settlement of disputes concerning asset obligations to which the insolvent enterprise is a party. Where the court decides to commence insolvency proceedings, the arbitrator must issue a decision on suspension and transfer the dispute to the court which accepted the bankruptcy petition for resolution. However, if the court decides not to commence insolvency proceedings, the arbitrator can revoke the temporary suspension and continue settling the dispute; or
- the dispute is not related to asset obligations to which the company is a concerned party.

11.4 Statutes Governing Arbitration/Mediation

The fundamental laws governing arbitration in Vietnam are the Law on Commercial Arbitration and the Law on Civil Procedure. The Law on Commercial Arbitration regulates commercial arbitration competence, arbitration forms, the order and procedures for arbitrations, the competence of courts over arbitration activities, enforcement of arbitral awards and other matters. The Law on Civil Procedure provides the requirements and procedures for the recognition and enforcement of foreign arbitrators' awards in Vietnam. Mediation is governed by Decree 22/2017/ND-CP on commercial mediation, dated 24 February 2017.

11.5 Appointment of Arbitrators

Arbitrators are appointed by the disputing parties. If the parties do not appoint the arbitrators, they will be appointed either by the president of the chosen arbitration centre, in the case of institutional arbitration, or the competent court, in the case of ad hoc arbitration. According to Article 20 of the Law on Commercial Arbitration, a person who satisfies all the following criteria can serve as an arbitrator:

- having the full civil act capacity;
- possessing a university degree and having at least five years' work experience in the trained discipline;
- not being a judge, procurator, investigator or enforcement officer; or officer of a court, procuracy, investigative agency or judgment enforcement agency;
- not being a person under a criminal charge or prosecution, or serving a criminal sentence;
- not being a person who has fully served a sentence but whose criminal records have not yet been cleared; and
- other standards as may be imposed by each arbitration centre.

Mediators are chosen by the disputing parties or the mediation centres, according to the rules of such centres. According to Article 7 of Decree 22, a person who meets all the following conditions can serve as a commercial mediator:

- having full civil act capacity, good moral qualities and prestige;
- being able to work in an independent, impartial and objective manner;
- possessing a university or higher degree and having at least two years' work experience in the discipline they studied;
- having mediation skills and legal knowledge, as well as knowledge of business and commercial practices and relevant issues;
- not being a person under a criminal charge or prosecution, or serving a criminal sentence;
- not being a person who has fully served a sentence but whose criminal records have not yet been cleared;
- not being a person serving the administrative measure of consignment to a compulsory education institution or compulsory detoxification establishment; and
- other standards as may be imposed by each mediation centre.

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

12.1 Duties of Directors

As discussed in **2.3 Obligation to Commence Formal Insolvency Proceedings**, when a company becomes insolvent, the legal representative submits a bankruptcy petition to the court. See **2.6 Requirement for Insolvency** for the criteria by which to determine the insolvent status of a company.

The legal representative (usually the general director or chairman of the MC or chairman of the board of management of a company) shall not, on behalf of the company, conduct transactions that may affect the rights and benefits of creditors, for example:

- concealing, disposing of or donating any company assets;
- making payment of unsecured debts;
- abandoning any right to claim a debt; or
- converting unsecured debts into secured debts.

Also, the legal representative, on behalf of the company, shall supervise and ensure the implementation of measures to preserve the company's assets, eg, registering security transactions.

According to the laws of Vietnam, where a civil transaction established or performed by a representative goes beyond the scope of representation, the representative must fulfil their obligations to the person with whom they transacted with respect to that part of the transaction which exceeded the scope of representation, unless such person knew or should have known that the scope of representation was exceeded but still carried out the transaction. As such, a director who is also a legal representative of a company may have to bear responsibilities towards the creditors if such director established or performed a transaction beyond the scope of their representation with the creditors unless, among others:

- the creditors knew or should have known that the scope of representation was exceeded but still carried out the transaction; or
- the company which the director represents has accepted the transaction; although the personal responsibility of the director towards creditors will last even after the company which the director represents is bankrupt.

Under the Bankruptcy Law, if it is apparent that a company conducts activities or transactions affecting the rights and benefits of creditors as discussed in the second paragraph of this section, and the legal representative is incapable of managing the company, the judge can issue a decision to replace the legal representative of the company. In addition, if a director breaches fiduciary duties, they may have to compensate for the damage caused to the company. They may also have to bear criminal liability for "lack of responsibility causing material consequence" under the Criminal Code 2015.

12.2 Direct Fiduciary Breach Claims

If the directors are personally liable to the creditors due to activities or transactions beyond the scope of their representation, as mentioned in **12.1 Duties of Directors**, the creditors may file claims directly against the directors, irrespective of the insolvency proceedings.

12.3 Chief Restructuring Officers

In insolvency proceedings, it is not typical for companies to appoint chief restructuring officers. However, the company is allowed to hire lawyers, accountants, financial advisers and other advisers to develop the recovery plan as well as give advice on the business operation of the company.

12.4 Shadow Directorship

The current law of Vietnam does not cover the legal concept of shadow directorship.

12.5 Owner/Shareholder Liability

Under the Enterprise Law, owners of private enterprises or general partners of any partnerships are responsible for all the enterprises' obligations with all of their personal assets rather than just assets contributed to the enterprise. Thus, the decisions on declaration of bankruptcy do not exempt private enterprise owners or general partners from fulfilling financial obligations to the creditors who have not received payment, unless the entities involved have other agreements.

13. Transfers/Transactions That May Be Set Aside

13.1 Historical Transactions

A transaction of an insolvent company which was conducted within six months before the commencement date of insolvency proceedings is deemed invalid if it falls into one of the following categories:

- the transaction is related to asset assignment which is not at market price;
- conversion of unsecured debt into secured debt, or partly secured debt, by the assets of the company;
- payment or set-off which benefits a creditor in respect of a debt that has not yet become due or with a sum that is larger than a debt which has become due;
- donation of assets;
- the transaction is outside the purpose of the business operations of the enterprise; or
- other transactions that dispose of the assets of the enterprise.

Any of the above transactions between the company and "related persons" within 18 months before the commencement date of insolvency proceedings shall be deemed invalid. The Bankruptcy Law provides a specific list of related persons, including persons or a group of persons capable of controlling the decision-making and operations of an enterprise via its management bodies, spouse, parent or foster parent, child, adopted child, or sibling of a manager of an enterprise.

In addition, the court can decide to suspend the performance of some contracts temporarily if the performance of such contracts may cause disadvantage to the company.

13.2 Look-Back Period

Transactions which are conducted within, as the case may be, six or 18 months before the date when the people's court issued a decision to commence insolvency proceedings can be declared invalid by the court. See **13.1 Historical Transactions**.

There is no look-back period covering transactions that can be suspended by the court.

13.3 Claims to Set Aside or Annul Transactions

Receivers, employees or creditors can request a declaration of invalid transaction. Claims for declaration of invalid transactions can be brought at any time before the court that issued the decision declaring bankruptcy.

A creditor or the insolvent company can request a suspension of currently effective contracts. There is no mechanism under the laws of Vietnam for a party other than the company and creditors to request such a suspension. Claims for suspension of currently effective contracts can only be brought before the commencement of insolvency proceedings.

14. Importance of Valuations in the Restructuring and Insolvency Process

14.1 Role of Valuations

During insolvency proceedings, valuations are used to determine the value of the following assets:

- assets of the company after the commencement of insolvency proceedings, if the court finds that the determination of asset values by the insolvent company is not accurate;
- assets of the company after the court has issued the decision declaring bankruptcy; and
- assets of the debtors or obligors, which shall be recovered by a bailiff for the benefit of the insolvent company.

14.2 Initiating a Valuation

A valuation of the company's assets can be initiated in one of two ways:

- while conducting an inventory of assets, at the request of the court, the Receiver shall hold an inventory and valuation of a part or all of the assets of the company. Note, this valuation is initiated only if the court finds that the company has determined its asset value inaccurately. See **14.1 Role of Valuations**; or
- after the company is declared bankrupt, the Receiver must arrange a valuation of assets within a time limit of ten working days. If assets are in danger of being destroyed or significantly decreasing in value, the Receiver shall specify the value, then liquidate such assets.

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14.3 Jurisprudence

Regulations on valuation in bankruptcy are only limited to a few provisions establishing the Receiver's duty to hold a valuation to determine the asset value of insolvent companies. The asset valuation shall be conducted by licensed valuation organisations, unless the Receiver and the enforcement officer are unable to engage an authorised valuation organisation. There is no special document for the valuation of bankruptcy. Such valuation, therefore, shall comply with the regulations of a standard valuation provided by the Law on Price and its guidelines.

The enforcement officer from the Civil Judicial Enforcement Office shall decide on the revaluation of assets in a case where assets have been liquidated. An M&A process can be undertaken to mitigate valuation challenges. However, this is not required in insolvency proceedings.