APPENDIX III:
HANDOUTS

INSOLVENCY IN INDONESIA

PREPARED BY
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PREFACE

The remedy of liquidation is a long historical and traditional method of dealing with the insolvency of a corporation. It is used, in effect, to terminate the commercial activities of an insolvent corporation. Liquidation tends to be close to universal in its concept, acceptance and application. It normally follows a pattern that includes:

- An application to a court or tribunal either by the corporation itself or by creditor(s);
- An order or judgment that the corporation be liquidated;
- The appointment of an independent person to conduct and administer the liquidation;
- The immediate closure of the business activities of the corporation;
- The termination of the powers of directors and employment of employees;
- The sale of the assets of the corporation;
- The adjudication of claims of creditors;
- Distribution of available funds to creditors (under some form of priority); and
- The ultimate dissolution of the corporation.

An insolvent corporation, in the insolvency law regime, may have a "rescue" which provides for the continuation (and not the liquidation). This may take the form of a composition, by which the debtor and the creditors agree to a simple compounding of debts. For instant, the creditors agree to receive a percentage of the debts they are owed in full, complete and final satisfaction of those debts. The debts of the corporation are thus reduced or satisfied, it becomes solvent and may continue on. A rescue might also take the form of a complex reorganization under which, for example, the debts of the debtor are restructured (review the yield, extended the period of loan and or payment, possible change in the identity of lenders). However, rescue does not imply the corporation, its creditors and its shareholders are or will be completely restored. Nor does rescue necessarily mean that ownership and management of an insolvent corporation will maintain and preserve their respective posi-

tions. In general, however, rescue does imply that under whatever form of plan, scheme or arrangement is agreed, the creditors will eventually receive more than if the corporation was immediately or soon liquidated.

Although the concept of rescue is not so universal as that of liquidation and thus does not follow such a common pattern or process, however, it may contain several essential elements as follows:

- The voluntary submission by a corporation to the process (which may or may not involve judicial proceedings and thereafter judicial control or supervision);
- An automatic and mandatory stay or suspension of actions and proceedings against the property of the corporation affecting all creditors for a limited period of time;
- The continuation of the business of the corporation either by the existing management, an independent manager or a combination of both;
- The formulation of a plan which proposes the manner in which creditors, equity holder and the corporation itself (including its business and assets) will be treated;
- The consideration of and voting on acceptance of the plan by creditors;
- Possibly, the judicial sanction of an accepted plan; and
- The implementation of the plan.

INDONESIAN BANKRUPTCY REGULATION

The corporate insolvency regime of Indonesia is contained in the Bankruptcy Ordinance 1905. This law was taken from Dutch law of the late 19th century. It provided for a liquidation or bankruptcy process and a form of "composition" or suspension of payment process. It was outdated and rarely used. Following the effect of the financial crisis some substantial reform was made, in the form of a Government Regulation in lieu of law, April 1998. This regulation is known as the Bankruptcy Regulations. It came into force in August 1998. The regulations supplement and amend the Bankruptcy Ordinance and substantially expand and reform the suspension of payments process.

There are two "rescue" processes available under the insolvency Law of Indonesia. The first is commenced by the debtor (or creditors) filing a petition for bankruptcy. A stay or suspension of all actions takes effect for 90 days. If, within that time, the corporate debtor presents a plan of composition and creditors approve it, the plan takes effect. If a plan is not proposed the debtor is liquidated.

The second process is commenced by a corporation filing a request for

suspension of payment of debts. This is then followed by a temporary suspension of payments for a maximum period of 45 days during which time the proposal for the permanent suspension of payments must be prepared for negotiation between the debtor and the creditors. The affairs of the corporate debtor are jointly managed by court appointed administrators and by the debtor. If the proposal is presented within that time the court may order a permanent stay which is effective for a period of 270 days. The plan must then be negotiated during that time. The creditors vote on the proposal. If it is refused the court may proceed with the liquidation of the corporate debtor.

Most of criteria of good practice standard in insolvency law adopted by Asian Development Bank on the Report of Regional Technical Assistance 5795: Insolvency Law Reforms in the Asian and Pacific Region, 2000, has been applied fully or in part with the Indonesian Bankruptcy Regulations. Appendix-1 presents a diagram of an application of the standard.

The Indonesian Bankruptcy Regulations since its enactment in August 1998 effectively used by creditors as far as the number of petitions is concern. During September 1998 till December 1999, 156 petitions for bankruptcy and suspension of payments have been filed. The verdict is as follows:

NO.	VERDICT	NUMBER OF PETITIONS	PERCENTAGE
1.	Liquidation petitions granted	39	25.00 %
2.	Suspension of payments granted	12	7.69 %
3.	Liquidation petitions denied	39	25.00 %
4.	Suspension of payments denied	12	7.69 %
5.	Liquidation petitions discharged (error in procedures)	11	7.05 %
6.	Suspension of payments discharged (error in procedures)	-	-
7.	Liquidation petitions nullified	4	2.56 %
8.	Suspension of payments nullified	2	1.28 %
9.	Liquidation petitions revoked	18	11.53 %
10.	Suspension of payments revoked	2	1.28 %
11.	The plan in liquidation petitions approved	8	5.12 %
12.	The plan in suspension of payments petitions approved	9	5.76 %
	TOTAL	**156**	**100 %**

The Indonesian Bank Restructuring Agency (IBRA) as the biggest creditor, nevertheless, enters the process under Bankruptcy Regulations as one of the possibility to recovery. As of December 2000 IBRA involves in 69 petitions for bankruptcy worth IDR 13.2 trillion. The petitions filed by IBRA and or by other creditors. Among these petitions 53 has been ruled for final verdict (50 granted for liquidation of the corporate debtor), 6 in the process of appellate in the Supreme Court and 10 in the proceedings to be ruled by commercial court. The number of petitions is considerably small compare to 2388 cases tried using common civil court proceedings–most cases already at the trial when the credit was put under the control of IBRA. Therefore, commencing bankruptcy petition is quite a number in view of judicial process compare to 50 cases settled through the issuance of distress warrant by IBRA (the enforcement of IBRA power under banking law and regulation).

INFORMAL WORK-OUT

In the complexity of business transactions and factors influences in the insolvency law regime and its enforcement and in consideration to a betterment result to the creditors, an informal work-out is need to be developed. The reasons for the development of the informal process are important because they suggest that even the more developed and modern formal rescue regimes are not always entirely suitable to the task of rescue. It is claimed that, first, there is a need for something more flexible and less rigid than the process which is available under formal insolvency rescue regimes and that, secondly, many cases of corporate financial difficulty require much earlier proactive response from creditors which is not normally possible under the formal rescue regimes. It is also suggested that, because of the essentially private nature of the process, there is less publicity and less commercial damage for the debtor.

IBRA is pioneering to develop work-out process particularly on the biggest 21 obligors under IBRA involving IDR 87.9 trillion of credit as of January 18, 2001. It goes through 19 steps to accomplish the work-out. Appendix-2 presents stages of the work-out process. In America, the concept of the informal work-out has become possible more developed. It is now sometimes used as the preliminary to that which has become known as a 'pre-packaged' Chapter 11. Indonesian has now in the process of identifying concepts of informal work-out to be adopted in the law of debt restructuring. At least the fifth academic draft has been produced before it comes into legislation process. The concept still considerably premature as the contain therein is not yet commercially and

legally wide socialized especially to the financiers as creditors.

The informal work-out depends for its effectiveness on a number well-defined initial premises. These may be summarized as follows:

- The fact that a corporation owes significant debt to a number of bank or other financial institution creditors and the present inability of the corporate debtor to service the debt;
- The attitude that it may be preferable to negotiate an arrangement for the financial difficulties of the corporate debtor, as between the corporate debtor and the financiers and also between the financiers themselves;
- The use of relatively sophisticated refinancing and other commercial techniques that might be employed to alter, rearrange or restructure the debts of the corporate debtor or the corporate debtor itself;
- The prospect that there may be a greater benefit through the negotiation process than by direct and immediate confrontation resort to the insolvency law; and
- The sanction that if the negotiation process cannot be started or breaks down there can be relatively swift and effective resort to the application of an insolvency law.

Of these, it is possible the last factor that provides the main impetus to bring the creditors and the debtor together. That is yet another reason why an efficient insolvency law is important.

APPENDIX-1
INSOLVENCY LAW – GOOD PRACTICE STANDARD

NO.	GENERAL PRINCIPLES OF INDONESIA	BANKRUPTCY REGULATIONS
(1)	(2)	(3)
1.	An insolvency law regime should clearly distinguish between, on the one hand, personal or individual bankruptcy and, on the other, corporate bankruptcy.	Not applied
2.	All corporations, both private or state-owned (with the possible exception of banking and insurance corporations), should be subject to the same insolvency law regime.	Applied in part

(1)	(2)	(3)
3.	The optimum design of a corporate insolvency law regime should in corporate both liquidation and rescue processes by a 'one law, two system' convertible design. This may be either a pure unitary or modified unitary design. In a modified unitary system the law should provide, in particular for conversion from the reorganization process to the liquidation process.	Applied
4.	(1) A debtor should have easy access to the law by providing simple threshold proof of the basic criteria (insolvency or financial difficulty). The debtor through its directors or board of management may conveniently provide a declaration to that effect. There should be sanctions for false declarations;	Applied
	(2) A creditor should be required to establish threshold proof of insolvency by evidencing a 'presumption' of insolvency on the part of the corporate debtor. Clear evidence of the failure of a corporate debtor to pay a matured debt is all that should be required to evidence such a presumption.	Applied in part
5.	(1) Liquidation. If it is determined that a debtor corporation should be liquidated, the powers of the existing management should be terminated and an independent administrator appointed to exercise those powers and to conduct the liquidation;	Applied
	(2) Reorganization. Existing management should, generally continue, subject to the exercise of supervisory power by an independent administrator but with the possibility, if circumstances require it, of the independent administrator assuming complete power;	Applied
	(3) Liquidation. A stay or suspension of	Not applied

(1)	(2)	(3)
	actions and proceedings against the property of a debtor corporation should be immediate, but confined to unsecured creditors only. There should be no interference with or stay upon the rights of secured creditors, owners of leased property or the like;	
	(4) Reorganization. The automatic stay or suspension of actions should be as wide and all embracing as possible. It should apply to all creditors (secured or otherwise) and to persons having an interest in property used, occupied or in the possession of the debtor (such as lessons of property, retention of title claimants and the like);	Applied
	(5) The stay should be of limited specific duration and should provide for the possibility of relief from the stay on the application of affected creditors or other persons to the court or tribunal;	Applied
	(6) The law should sanction and provide for a commercially sound form of safe 'priority' for funding that is necessary for the on-going and urgent business needs of a debtor during the rescue process.	Not applied
6.	(1) The insolvency legislation should provide for swift and strict time limits for the initial process regarding an insolvent corporation. The court or other tribunal system must be properly resourced to enable the process to be implemented;	Applied
	(2) The medium term administration of an insolvent corporation that is being reorganized (for example, from the time of commencement to the time that a plan is approved or not) also requires the application of a sensible time frame. The long-term administration of a company that is being liquidated requires efficient continuous handling.	Applied
7.	(1) The administration of a corporation in liquidation is a public responsibility	Applied in part

(1)	(2)	(3)
	and should be viewed as part of the overall regulation of corporations. It is possibly best handled by a specialist, government agency, which must be adequately resourced and financed;	
	(2) The law should require that creditors are informed of the progress of the administration at relevant stages.	Applied
8.	(1) The law should prescribe, as fully as possible, for the provision of relevant information concerning the debtor;	Applied
	(2) It should also provide for independent comment and analysis on the information.	Applied in part
9.	(1) An insolvency law should make proper provision for the involvement of creditors as part of the liquidation or rescue process;	Applied
	(2) An insolvency law should clearly define the voting rights of creditors and should prescribe minimum requirements for the approval of a plan of rescue;	Applied
	(3) Provision should be made for voting by classes of creditors, particularly secured creditors, if the rescue proposal is required to bind such classes;	Applied in part
	(4) The law should provide protection against manipulation of the voting system and, in particular, should ensure that a court or other tribunal is empowered to set aside the results of voting which are obtained by the exercise of votes of insiders or persons who are related to the corporation, its shareholders or directors;	Applied in part
	(5) The effect of a vote of the requisite majority of a class should be made binding on all creditors of that class.	Applied

(1)	(2)	(3)
10.	(1) The law should not proscribe the nature of a plan, except in regard to fundamental requirements and to prevent commercial abuse. In particular, the law should not intrude into the 'commerciality' of a plan except to ensure that the result of a plan will provide a greater benefit to creditors than in a liquidation of the debtor;	Applied in part
	(2) The law should provide for objective analysis of a proposed plan by an independent adviser. In particular, it should be demonstrated that the proposed result or effect of a plan is commercially sound;	Applied in part
	(3) The law should provide for a plan to be provided, nominally by the debtor, within a specified period of time.	Applied
11.	The law should provide for a court or other tribunal to have a general supervisory role of the rescue process. In particular the court or tribunal should be empowered to set aside the approval of a plan if it is shown that it is not in the best interests of creditors considered as a whole.	Applied in part
12.	(1) Provision should be made for the possibility that the execution of a plan may require supervision or control by an independent person.	Applied in part
	(2) A plan should be capable of amendment (by vote of the creditors) if it is in the interests of the creditors.	Applied in part
	(3) The law should provide for the debtor to be liquidated upon the termination of a plan as a result of non-performance of the plan.	Applied in part
13	An insolvency law regime should, as far as possible, preserve the principle of equal treatment for all creditors. Accordingly, the insolvency law should	Applied in part

(1)	(2)	(3)
	limit the number of priority claims to as few as possible.	
14.	An insolvency law regime should contain adequate provisions relating to avoidance of transactions, which result in damage to creditors or conflict with the principle of equal treatment of creditors of the same class.	Applied
15.	An insolvency law regime should contain provisions for the civil sanction of fraudulent and other like conduct in the operation and management of a corporation, which causes damage or loss to creditors of an insolvent corporation.	Applied in part
16.	An insolvency law regime should include provisions relating to recognition, relief and co-operation in cases of cross-border insolvency, preferably by the adoption of the UNCITRAL model law on cross-border insolvency.	Not applied

Appendix-2
DEBT RESTRUCTURING NEGOTIATIONS: ACTIVITIES AND MILESTONES*

1. Preliminary discussions with debtor, and preliminary assessment about debtor;
2. Inter-creditor meetings;
3. Qualify debtors to categories;
4. Inter-creditor agreement;
5. Debtor to sign letter of commitment, to finalize debtor's qualification;
6. Follow up for Class A Debtors stand-still agreement (optional);
7. Collect preliminary data and information (about debtor);

* Does not necessarily go through subsequent order.

8. Appoint Creditor's Advisors (Financial & Legal);
9. Debtor to discuss or consult Creditors;
10. Debtor to develop restructuring proposal;
11. Due diligence;
12. Develop Preliminary Scenarios;
13. Identify action/policy needed to safe-guard or maintain continuity of operation;
14. Follow up;
15. Refine Creditor's Scenario;
16. Finalize Debtor's Proposal;
17. Negotiations;
18. Debt Restructuring Agreement;
19. Implement.

INSOLVENCY REFORMS IN ASIA:

AN ASSESSMENT OF THE IMPLEMENTATION PROCESS AND THE ROLE OF THE JUDICIARY

PREPARED BY
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WHAT IS INSOLVENCY?

A debtor is in a state of insolvency when the debtor is not able to pay a due debt. This is what is generally known as 'cash flow' insolvency.

The debtor itself will know when this position has been reached. It should require only a simple declaration to that effect by the debtor, through its directors or board of management, to prove that it is insolvent. Such declaration should be in good faith and such good faith should be established. From the perspective of a creditor, a reasonably convenient and objective test to evidence insolvency is the failure of a debtor to pay a debt within a specified period of time after a written demand for payment has been made.

WHAT ARE THE AREAS OF INSOLVENCY LAW?

Insolvency reforms address different types of insolvency practices:

1. Formal insolvency law regimes
   - The traditional liquidation or bankruptcy procedure. This process is the most important to protect creditor rights.
   - Rescue regimes that emphasise and encourage reconstruction or rehabilitation of the company.
2. Informal commercial processes that are designed to facilitate rehabilitation or rescue outside of insolvency regimes. These processes are commonly referred to as 'workout' or 'out of court' processes and have been developed as an alternative to formal rescue procedures. In Asia, in particular in Indonesia, structured informal workout processes have been developed in response to the economic crisis.

WHAT ARE THE SALIENT FEATURES OF THE INDONESIAN INSOLVENCY REFORMS?

The reforms to the Indonesian bankruptcy law have brought about some improvements. Indeed, it is remarkable that:

- one law now governs two processes-one for bankruptcy or liquidation and the other for suspension of payments;
- the judicial procedure including appeals is quicker;
- the evidence or proof requirements to establish that a corporate debtor is insolvent have been simplified; and
- a more open and transparent process has been brought about.

A new formal reorganisation or restructuring has also been developed through the Ministry of Justice and private sector contributions. This reform should provide separate legislation for cases of corporate reorganisation and restructuring.

WHAT ARE THE SALIENT FEATURES OF THE INDONESIAN INSOLVENCY LAW REGIME?

The philosophy of the Indonesian Bankruptcy Law is both distributive and rehabilitative. The Bankruptcy Law allows the concept of corporate reorganisation with the approval of a required number of unsecured creditors, failing which the company will be liquidated and its assets distributed to creditors. Indonesian law is based upon European civil law traditions. Bankruptcy rules prior to the enactment of the Bankruptcy Law were included as part of the Commercial Code.

WHAT ARE THE PROCEDURES OF THE INDONESIAN BANKRUPTCY LAW?

There is only one type of insolvency procedure in Indonesia. An individual or company can be declared bankrupt at the request of:

1. the debtor;
2. one or more creditors; or
3. the public prosecutor.

If the debtor is a bank, Bank Indonesia may only file the petition for a declaration of bankruptcy, and if the debtor is a securities company, Bapepam may only file the petition for a declaration of bankruptcy.

WHAT ARE THE COMPETENT BODIES IN THE BANKRUPTCY PROCEDURE?

The Supreme Court has exclusive jurisdiction over bankruptcy appeals. The Commercial Court is specifically empowered by the Bankruptcy Law to

deal with petitions for bankruptcy declarations and for suspension of payments of debts. Pursuant to the Bankruptcy Law, insolvency procedures available in the Indonesian legal system for the administration of corporate debtors can be taken through the Commercial Court by:

1. the filing of a bankruptcy petition by debtor or creditors; and/or
2. the filing of an application for suspension of loan payments by the concerned debtor.

Article 1 of the Bankruptcy Law provides that a debtor with two or more creditors which does not pay at least one of the loans which are due and payable shall be declared bankrupt upon the decision of the Commercial Court, on a petition of either the debtor or of one or more of its creditors.

A bankruptcy petition is determined by the Commercial Court, which can decide to accept the petition by declaring that the debtor is bankrupt, reject the petition, or approve the suspension of loan payments proposed by the debtor. In the event the Court accepts the bankruptcy petition, the settlement of the loan payment will he undertaken by a receiver under the supervision of a Supervisory Judge. Within the settlement process, it is possible that the corporate debtor is restructured and reorganised by the receiver in order to maximise and increase, if possible, the value of bankrupt assets. Following the settlement of the loan repayment with bankrupt assets, the insolvent corporate debtor can either be liquidated or stay dormant but remains in existence as a legal entity.

WHAT IS NEEDED TO IMPLEMENT INSOLVENCY REFORMS?

There is a need for an institutional infrastructure, namely an efficient judicial system or other state mechanism providing for the prompt determination of rights, the availability of remedies and proper administration for the enforcement of Court orders.

The integrity of the Court or other tribunal and of the organs of state involved in the enforcement process is of paramount importance. Indeed, it is likely that some elements of the judicial system are antiquated or could be influenced by public or private interests. If these institutional problems are not tackled then however developed the legal superstructure, it will not achieve its purpose.

WHAT SHOULD BE THE ROLE OF THE JUDICIARY?

Judges should apply the fundamental principle of adherence to the Rule of Law. This will bring predictability to the process and recognition that there are peaceful means to settling disputes on an objective basis. To achieve this, the judiciary should be independent, which means that the judiciary should be able to make decisions based upon the rule of law applied to the facts of the particular case. Decisions should be made intelligently and on a timely basis, with an appropriate right of appeal.

This requires that the judiciary be made up of dedicated and skilled legally trained persons operating without conflict of interest, that it has the support staff and resources necessary to run its operations efficiently.

WHAT SHOULD BE THE QUALIFICATION AND CONDUCT OF THE JUDGES?

Obviously, judges must be skilled persons. Their appointment should be based on merit and not on patronage. A judge dealing with insolvency matters should also have a comfortable familiarity with financial and business concerns.

The judiciary must avoid any conflict of interest so that any judge dealing with a case shall have no personal or financial motive to decide the case in any particular way. Similarly, judges should be accustomed to handling cases of significant complexity, analysing them so that they may be dealt with by the applicable law being applied to the relevant material facts. The judiciary should have an internal mechanism of monitoring that judges meet acceptable standards of behaviour.

HOW SHOULD THE JUDICIARY OPERATE?

The judicial process should be predictable and reliable. Decisions should be made public and be published in written form. Decisions should be consistent and refer to a system of precedent. The judiciary should and time limits should be enforced. The judiciary should operate in a way that curbs commercial uncertainty and scepticism about the court system and the judiciary as an institution.

It is important that the judiciary seeks to implement the underlying principles, described above, of the bankruptcy process as some recent decisions based on a very narrow interpretation of the law have brought the reformed system into some disrepute as an effective mechanism for resolving corporate insolvency.

INSOLVENCY OF THE PUBLIC COMPANY

CASE FROM INDONESIA

PREPARED BY TEAM OF
INDONESIAN CAPITAL MARKET SUPERVISORY AGENCY

INTRODUCTION

The economic crisis that hit Indonesia in the middle of 1997 was caused mainly by a weak banking system and over-reliance on short-term foreign loans. A lot of companies were over reliant upon foreign loans because the Rupiah used to depreciate at a slow and predictable rate against US dollar. This over reliance made those companies reluctant to hedge their loans. As a result, when the exchange rate crisis erupted, these companies suddenly found their loans had increased several times higher compared to the amount it used to be in local currency. In addition, lenders balked at providing new loans and became increasingly reluctant to roll over short-term loans. All of these problems had created an economic dilemma with wide implications for the economic welfare of the nation.

As a part of economic sector in Indonesia, the capital market was also heavily shaken by the crisis. The impact of the crisis in the capital market is reflected in the decrease of the Jakarta Stock Exchange (JSX)/Surabaya Stock Exchange (SSX) composite index, trading value and market capitalization. While prior to the crisis, the JSX composite index reached 740 in July 1997, the figure dropped to 401,71 at the end of 1997. The case was also true for the trading value and market capitalization, where the figure plunged to US$ 41.5 billion and US$ 29.6 billion, respectively. Furthermore, in 1998, the JSX Composite Index dropped to 398.03 and the trading value plummeted to an amount of US$ 9.7 billion and market capitalization also dropped fell to an amount of US$ 22 billion.

In 1999, the secondary market recovered as the trading volume on the stock exchanges increased. This increase in trading volume was partly caused by favorable investor sentiment due to the People Consultative Assembly Meeting in October 1999. At the end of 1999, the JSX Composite Index was increased to 676.91, and total trading value of JSX and SSX increased substantially to the amount of US$ 18.8 billion, while market capitalization increased to the amount of US$ 63.6 billion.

Unfortunately, on December 2000 the capital market situation was not very satisfying. Statistic data showed that total trading value in Jakarta and Surabaya Stock Exchange dipped to US$ 14.6 billion, and market capitalization in JSX was only US$ 27.95 billion, far below the market capitalization in 1999. From the issuers/public companies side, the impact of the crisis is reflected in the decrease of company financial performance as shown in the financial statement. This impact kept on going as the number of issuers/public companies having default in their liability payment and went bankrupt continued to increase.

To rebuild the economy, several steps have been taken by the government. Supported by IMF and other international agencies, the government enacted several programs such as financial reform, economic restructuring, and improvement of the quality of monetary and fiscal policy. The goal of the programs was stressed on strengthening the foundation of Indonesian economy as a whole. By strengthening the economy as a whole, hopefully there will be a lot of international investors come to Indonesia.

THE INSOLVENCY OF ISSUERS OR PUBLIC COMPANIES

To recover the economy, corporate financial restructuring is the number one priority. The longer it is delayed the more difficult it becomes. Financial restructuring can be conducted in several ways. It may involve improvement in the quality of corporate assets, or adjustment of debt and capital structure. In order to facilitate the companies to restructure their finance, Bapepam as the capital market authority has issued several new and revised rules, which among other things are tender over rule, take over rule, conflict of interest and preemptive right rules. These new and revised rules make it easier for companies that are in financial difficulties to arrange debt equity swaps and to raise capital by selling new equity of convertible bond; two corporate actions that are often used to prevent bankruptcy.

Since the issuance of the rules, a lot of companies have conducted financial restructuring. For example, there are approximately 20 companies restructure their financial position based on Bapepam Rule No. IX.D.4 regarding Capital Increases Without Pre-emptive Rights and approximately 15 companies restructure their finance based on Bapepam Rule No. IX.D.1 regarding Right Issue, since the issuance of the rules. The success of financial restructuring is very important because it will fight unemployment and the surviving companies will eventually pay their debts, which will accelerate the economic recovery.

Although most of them have succeeded the restructuring, there are also some companies who did not succeed and technically were bankrupt. Since the enactment of the New Bankruptcy Law, Bapepam has received several Commercial Court Decisions on bankruptcy of issuers of public companies.

To maintain the disclosure aspect in bankruptcy matters, in August 14, 1998, Bapepam issued Rule X.K.5 concerning Disclosure of Information by Issuers And Public Company With Respect to Declarations of Bankruptcy. This rule obligates the issuer/public company which are default or those which are proposed to the court for bankruptcy to report and disclose the information to Bapepam and Stock Exchange no later that 2 days after default or 2 days after the issuer/public company know about the petition. This rule also obligates parties who submit petition on bankruptcy to report to Bapepam and Stock Exchange no later than 2 days after the petition has been submitted. Stock Exchanges are obligated to publicize the information received from the two parties on the same day they are received.

Besides financial restructuring, it is also recognized that increasing disclosure and corporate governance play a significant role to combat the crisis. These issues are important since lack of disclosure and good corporate governance contributed to the crisis in two ways. First, insufficient disclosure and weak corporate governance has created significant problems in financial and corporate sectors. Second, as the situation in East Asia deteriorated, the inability of international investors and external creditors to differentiate between sound financial institutions and corporations from the distressed ones resulted in the problem of adverse selection. Consequently, creditors became reluctant to role over maturing short-term debt and international investors became reluctant to hold domestic currency denominated securities.

Corporate governance is a term referring to fiduciary responsibility of corporate directors to their shareholders. There are a number of corporate governance aspects that are important; fairness, disclosure, transparency and accountability.

Disclosure is one core of the principles of good corporate governance. Continuous disclosure rules include annual and other periodic reports, and special disclosure in the case of any material events. Bapepam rules obligated issuers/public companies to disclose all material information within 48 hours of the event. With respect to accounting practices, disclosure has been maintained fairly well. Issuers/public companies are obligated to submit annual and semi annual financial statement to Bapepam. In order for disclosure principles can be effectively enforced, the development of consensus among market par-

ticipants and the legal profession as to what disclosure is required by the Law is needed.

List of Issuers which were declared bankrupt by Commercial Court

No.	Debtors
1.	PT Dharmala Sakti Sejahtera Tbk.
2.	PT Ometraco Tbk.
3.	PT Fiskaragung Perkasa Tbk.
4.	PT Putra Surya Multidana Tbk.

List of Issuers which were filled to the Commercial Court for bankruptcy

No.	Debtors
1.	PT Concord Benefit Enterprises Tbk.
2.	PT Polysindo Eka Perkasa Tbk.
3.	PT Aster Dharma Tbk.

List of Issuers, which get PKPU (Suspension of Payment) status

No.	Debtors
1.	PT Davomas Abadi Tbk.

The most current issue on bankruptcy that has become an international issue is the bankruptcy decision of PT Dharmala Sakti Sejahtera Tbk. The summary of the case is as follow:

DEBTOR:
PT Dharmala Sakti Sejahtera Tbk. (DSST)

CREDITOR OR IT'S REPRESENTATIVES :
1. PT Hanil Bakrie Finance
2. BPPN (Indonesian Bank Restructuring Agency)
3. Others (21 creditors, including Bapepam, JSX and Directorate General of Taxation)

TOTAL DEBT:
Rp 4,224 trillion

LITIGATION PROCESS:
PT Hanil Bakrie Finance (HFC) as a Petitioner to file DSST bankrupt to the Commercial Court. Based on this petition, the Commercial Court declared suspension of payment to DSST. DSST submitted a plan for debt restructuring, but majorities of the creditors prefer to submit bankruptcy petition to court. On June 2000, the Commercial Court pronounced bankruptcy of DSST. Based in this petition the DSST submit an appeal petition to Supreme Court on June 13, 2000 and this petition was dismissed by the Supreme Court by its pronouncement of July 2000 in respect to stipulation of bankruptcy. On September 2000, the Supreme Court pronounced to dismiss the DSST petition.

This bankruptcy case became an international case because it involves a foreign company from Canada. It all started when President Director of DSST released power of attorney to Harvest Hero Ltd. on February 1, 1996. This power of attorney gave Harvest Hero Ltd. the ability to pledge and sell DSST's assets in the form of a stock certificate representing 1800 of another company's (AJMI) shares. Then on March 1, 1996 Harvest Hero Ltd., did pledge the stock certificate to Highmead Ltd, who later sold them to Roman Gold Assets Ltd. (RGA) after DSST has been declared bankrupt on June 6, 2000.

In the meantime, on October 26, 2000 the auction was taken place for the same stock certificate and it was bought by Manulife Financial, a Canadian company, for Rp 170 billion. The serial numbers of the stock certificate were the same as those belonged to RGA. The RGA's lawyer made an announcement that the stock certificate belonged to them. RGA lawyer came to the auction venue by bringing the original stock certificate, however the AJMI also brought the stock certificate. Because both of the two parties have the same stock certificate, there must be a criminal action on default of the certificate.

On the other hand, as an issuer and public company, DSST was required to maintain the disclosure in bankruptcy matter, pursuant to Bapepam Rule X.K.5 concerning Disclosure of Information by Issuers And Public Companies With Respect to Declarations of Bankruptcy. In addition, although the company has been declared bankrupt, the company is still obligated to disclose its material information as required in Rule Number X.K.1 concerning Disclosure of Information That Must Be Made Public Immediately.

In this case, Bapepam has launched an investigation and found out that DSST has related not only The Capital Market Law but also the Indonesian Criminal Codes. With regard to violation on the Criminal Codes, this case involves forgery of stock certificate and now it is under scrutiny of the National Police.

With regard to the Capital Market Law, Bapepam's investigation on this case has revealed that:

- President Director of DSST has never alerted the Board of Director on the pledge and sell of the stock certificate, which should be disclosed to the board;
- These pledge and sell are violation to DSST's and AJMI's Articles Of Association;
- These pledge and sell have never been made known to Auditor, Curator, and Appraiser so the stock certificate transaction was not included in the corporate financial statement. Therefore, this material information has never been made public either;
- These pledge and sell have never been disclosed to Bapepam; and
- These pledge and sell have never appeared in internal financial statement, periodic financial statement, Board of Directors and Commis-

sioners' minutes of meeting, Shareholders General Meeting, and other forms of corporate document.

In conclusion, Bapepam suspects DDST violated the principle of Disclosure of Information because DSST has never disclosed those pledge and sell of the stock certificate.

Based on the conclusion, Bapepam has issued an official letter to start a criminal investigation in the capital market which coordination with the National Police and the Office of Attorney General has been established. So far, Bapepam has involved in a number of intensive meetings with the two parties to follow up the investigation. Moreover, other government bodies such as Indonesian Bank Restructuring Agency (IBRA), has also actively involved in this case. IBRA, has filed corruption charges on one of DSST directors to the Attorney Office late January 2001. This corruption action, according to IBRA, has resulted in a loss of Rp 64.7 billion to the state.

AN OVERVIEW TOWARD THE DEVELOPMENT OF INSOLVENCY SYSTEM IN INDONESIA

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INTRODUCTION

Since the financial crisis hit several countries in Asia regions and which then spread to Indonesia, the confidence towards Indonesian private sectors has declined sharply. Indonesian corporations today are struggling to survive from a debt trap. Their capacity to service their debt cannot keep pace with the growth in the level of indebtedness. We can state without exaggeration that the grey clouds are still covering up this sector that may constitute a chronic miniature of Indonesian national economic recovery.

Although on one side the economic reform package of the IMF has succeeded to arrange the national economic system to become healthier, we must admit that the Indonesian private sectors stabilisation and restoration program is indeed slower compared to such other Asian countries experiencing crisis such as Thailand and South Korea. Relatively, the performance and economic restoration program taken by such countries was restored more rapidly even though is similar to Indonesia, which is not yet truly broad based and still mixed with a lot of weaknesses.

Paying attention to the development occurring presently, it is not too much to say that deficiencies in Indonesian insolvency system such as the lack of implementing rules and regulations; a questions of interpretation on the laws; inappropriate procedures to the laws; laws and regulations which do not reflect the business community desire; and sceptical ideas about the capability of members of judiciary, has taken major part in delaying the recovery of Indonesian corporate sectors. This situation leads to the need of insolvency law reform in Indonesia.

RECENT INSOLVENCY REFORM IN INDONESIA

The Government has shown particular interest to re-establish more effective insolvency system, in order to accelerate corporate restructuring and create healthier business practices and subsequently a better business environ-

ment for domestic as well as foreign companies.

At this juncture, the government has been dealing with two different but complementary areas of insolvency reforms. First area deals with emphasising and encouraging reconstruction or rehabilitation within formal legal proceedings and judicial system. In this case, the reforms to the Indonesian Insolvency Law that initiated in early 1998 already have brought about improvements in the insolvency framework. Among the benefit are inter alia, the bankruptcy and suspension of payment processes are now under one law. And with regard to judicial procedures, appeal is now quicker and the requirements necessary to establish that a corporate debtor in insolvent have been simplified. Generally speaking, the law provide a more open and transparent processes.

In addition, the government through the Ministry of Justice and Human Rights and private sector contribution is now developing a new formal corporate reorganisation procedure, which appears to provide separate legislation for cases of debt restructuring and corporate reorganisation.

Reminding that the implementation of an insolvency law requires not only an institutional framework but also professional expertise, an effort on improving the functioning of the Commercial Court has been carried on. The government has also been aware that in order to ensure fair treatment of all parties in debt settlements and thereby build up their confidence in the system, a legal framework and the judicial process both predictable and reliable are need to be firmly in place. One of the important steps rightly emphasised with regard to such issue is the appointment of ad-hoc judges with the qualifications commensurate with complex insolvency corporate issues. Such appointment is aiming to ensure the predictability of the process and accountability of the judiciary, which is believed as a key factor for maintaining public confidence in the credibility of the insolvency process.

The second area deals with informal (workout) processes designed to facilitate rehabilitation or rescue outside the insolvency law regime. This alternative solution is commonly referred to as out of court settlement restructuring. This process has been developed as a result of deficiencies in, or as an alternative to, formal bankruptcy rescue procedures. As it has been known in its effort to formulate a guideline of informal insolvency mechanism, the government has introduced a new agency known as Jakarta Initiative Task Force. The Task Force is a vehicle for the companies conducting debt restructuring, which has been experiencing problems in concluded a new agreement with the creditors. So that the companies could gain access to obtain new capital

through mediation of the Task Force. In relation to this matter, the government function is limited as a facilitator and pusher so that the negotiation process between companies and creditors may run well.

Recently, the government has taken steps to strengthen the powers of the Task Force in its mediation efforts by initiating a process whereby certain debtors can be referred to the Task Force for structured mediation. If it fails, it can result in the Attorney General filing a bankruptcy petition against the debtor.

CONCLUSIONS

The recovery of the Indonesian corporate sector lies at the heart of efforts to restore economic growth. In the mid prolonged crisis, which is until today not yet fully restored, the need to establish a better insolvency system in this country is indispensable, and many efforts have been devoted to achieve such purpose. Indeed the reform to establish a well-developed formal insolvency regime accompanied by strong informal formulated mechanism is a real achievement. However, it is fair to say that the great test of the new insolvency regime will be the functioning of the specialised court. This is not only limited to the attitude or the quality of judicial handling of insolvency cases, but also to the accountability of judges and court officials as a whole. It seems that both of them appear to require more considerable and sustainable improvement. In this early stage of the new regime the performance of the commercial court function is a very hard and precise exercise.

Whether those achievements, changes and improvement will finally work in practice as they are planned to, this is something that still remains to be seen in the future. It also remains to be seen whether the revised law and the system in general are not overly expected to fulfil the people, in particular business community desire. Because the insolvency provisions contain many rules and cases brought before the court, which may involve many modern and sophisticated commercial transactions, it is not exaggerated to say that the judges sitting in that court need to improve their capacity and knowledge. Considering this perspective, so that the realism of which (the whole insolvency law system) can always be challenged.