

A brief look at Suspension of Debt Payment Obligations



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As part of its groundbreaking restructuring, Indonesian shipping company PT Arpeni Pratama Ocean Line Tbk in early 2012 completed a court-supervised debt moratorium and restructuring process known as a Suspension of Debt Payment Obligations (Penundaan Kewajiban Pembayaran Utang, or 'PKPU'). This was just one of the highest profile examples of this debt-restructuring tool that has gained a great deal of attention from Indonesian businesses and the courts recently.

PKPU is part of Indonesia's 2004 Bankruptcy Law and provides creditors and debtors with an avenue to avoid liquidation bankruptcy. A PKPU gives a debtor the opportunity to prepare, negotiate and submit a composition plan to its creditors for their approval. The composition plan details how outstanding debts are to be restructured and typically provides, among other things, for rescheduled and extended payment terms, perhaps with a grace period, reduced interest rates and a waiver of penalties and overdue interest. More sophisticated restructurings, including debt buybacks and equity conversions, are also possible.

PKPU proceedings are conducted in the Indonesian Commercial Courts, which are part of the District Court system. There are presently five Commercial Courts in Indonesia: Jakarta, Medan, Semarang, Surabaya and Makassar. Each Commercial Court hears cases involving debtors domiciled in its area of jurisdiction.

As regulated under the Bankruptcy Law, particularly Articles 222-294, a PKPU may be initiated by either the debtor or a creditor. If it is the debtor that initiates PKPU proceedings, and the debtor is a limited liability company, the debtor must first obtain the approval of its General Meeting of Shareholders. If the debtor is an individual, the debtor must obtain the consent of his or her spouse unless there is a prenuptial agreement. If it is the creditor that initiates PKPU proceedings, the shareholder approval and spousal consent requirements do not apply.

A debtor's petition for a PKPU may also originate in response to a creditor's petition to put the debtor in liquidation bankruptcy. Where a creditor submits a petition to the Commercial Court for the debtor's liquidation bankruptcy, the debtor may respond by petitioning the Commercial Court for a PKPU. The shareholder approval and spousal consent requirements do not apply where the debtor is responding to a creditor bankruptcy petition. If the debtor's PKPU petition is granted, the creditor's bankruptcy petition is automatically stayed for the term of the PKPU.

There is no insolvency test that must be satisfied to qualify for a PKPU (or for liquidation bankruptcy, for that matter) in Indonesia. However, there are nonetheless two requirements that must be satisfied. The first requirement for a successful PKPU petition (or, again, for liquidation bankruptcy) is that the debtor have at least two outstanding debts of which at least one must be due and payable but not yet paid. The second requirement is that

the unpaid debt must be capable of 'simple proof.' The term 'simple proof' means that the debt must not be subject to messy contract defenses requiring complicated legal proceedings to resolve.

If it is the debtor rather than a creditor that initiates the PKPU proceedings, the debtor must additionally prove to the Court that it is unable to pay the unpaid debt. This is to ensure that the proceedings are bona fide.

The Bankruptcy Law divides a PKPU into two stages, a Temporary PKPU (PKPU Sementara or 'PKPU-S'), potentially followed by a Permanent PKPU (PKPU Tetap or 'PKPU-T'). The maximum period of a PKPU-S is 45 days from the time the

PKPU petition is granted by the Commercial Court. If followed by a PKPU-T, then the maximum period for both the PKPU-S and the PKPU-T together is extended to 270 days.

(See also: Deals of the Year, 2012 – 'PT Arpeni Restructuring – Ocean Line's US Chapter 15: first time recognition for Indonesian restructuring by a US court' on page 27 of this issue of ASIAN-MENA COUNSEL).

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