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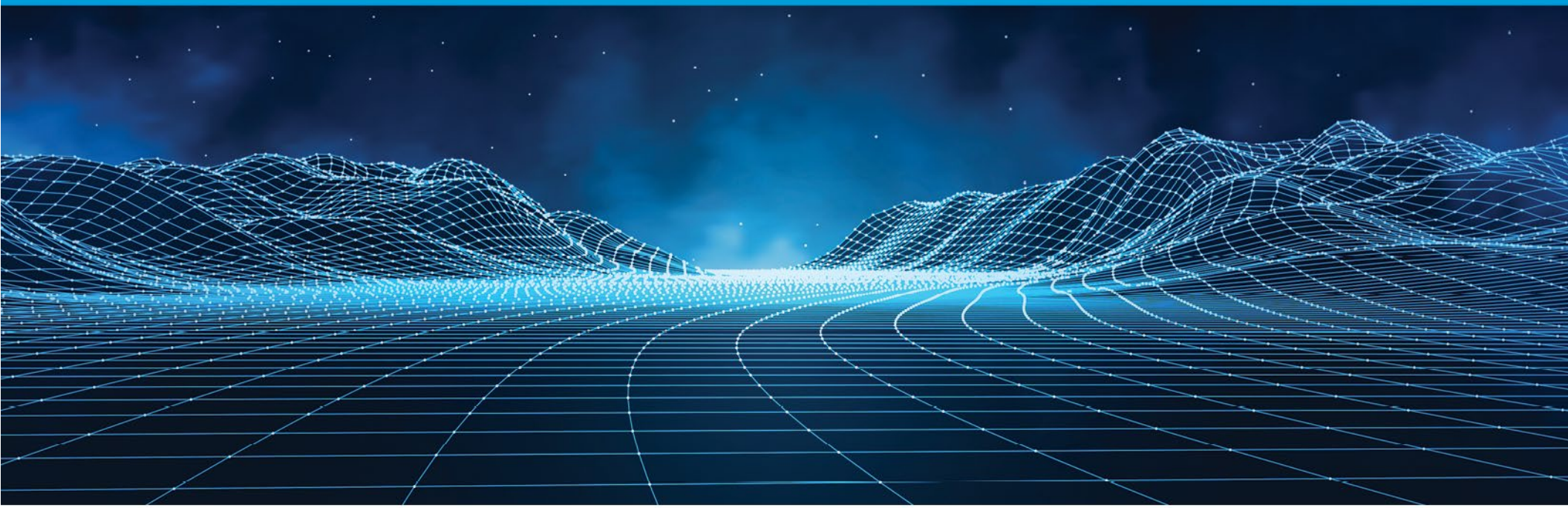
Directory of Restructuring and Insolvency Contacts

April 2020



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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

As the first country hit by COVID-19, China is several weeks ahead of many countries on the "curve" of the virus progression. Reopening Wuhan marked a milestone that China has the pandemic largely under control at the current stage, although many restrictions remain in place around the country. Many types of business are being seriously hit such as retail, real estate, and travel, etc. Although the bankruptcy of some companies seems inevitable, certain sectors relating to online business are booming, especially online teaching and conferencing etc. The economy has taken another step towards modernization, the international companies may consider now could be the time resuming their business planning re China.

With the largest internal market in the world with over a billion potential customers, China's economy was still ranked among one of the most attractive to multinational companies FDI inflows increased in last few years, China pledges to improve the investment environment, its foreign investment law and related regulations were issued to streamline the investment procedures, the growth of FDI is favored by the rapid development of the high-tech sector and fund inflows, the establishment of free trade zones and various other factors. The investments are encouraged in these industries or sectors such as high technology, manufacturing sector, production of equipment or new materials, health, medical devices, agriculture, service sector, recycling, use of renewable energies and protection of the environment, etc.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Hong Kong currently has no rescue mechanism, so careful planning if needed prior to commencing a global restructuring/insolvency as to how to proceed in Hong Kong. There are ways of achieving a rescue, but they need to be planned in advance. If the Hong Kong entity owns a company or assets in China, then PRC advice is needed too and the interplay between the restructuring/insolvency in Hong Kong and Mainland China, and at which level to take what action, needs to be understood at the outset. Hong Kong insolvency courts are good and independent.

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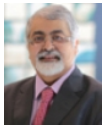

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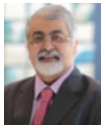

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Due to economic difficulties arising from COVID-19, many companies incorporated in Japan are becoming distressed. To rescue such distressed companies, both informal out-of-court workouts and formal in-court restructuring/insolvency proceedings are available in Japan. The most common formal in-court procedures are: (i) for liquidation purpose, the bankruptcy procedure under the *Bankruptcy Law* (*Hasan-ho*) and the special liquidation procedure under the *Company Law*, and (ii) for revitalization purpose, the restructuring procedures under the Corporate Reorganization Law (Kaisha Kosei-ho) or the *Civil Reconstruction Law* (*Minji Saisei-ho*). In general, Japanese restructuring/insolvency proceedings are considered to be debtor-friendly as it is difficult for creditors to take an active role in the procedure. The out-of-court workouts, generally, are the first choice by debtors due to its flexibilities and protecting its enterprise values but require the consents from all the financial institutions; which requirement can be an obstacle for debtors to choose the out-of-court workouts.

It is permissible for a debtor-in-possession to prepare and file a pre-packaged plan in relation to formal in-court restructuring/insolvency procedures. Potential acquirers of a distressed company generally prefer pre-packaged plans since such plans generally give such acquirers more control over the process. Under the restructuring procedure of the *Civil Reconstruction Law* (*Minji Saisei*), the debtor-in-possession may implement the pre-packaged plan after the commencement of such restructuring procedure. The pre-packaged plan needs to be adequate and fair as evaluated by the court and the supervisor. Stalking-horse bids are legally permissible but not common practice in Japan. Under the restructuring procedure under the *Corporate Reorganization Law* (*Kaisha Kousei*) and the bankruptcy procedure under the *Bankruptcy Law* (*Hasan*), in general, a trustee appointed by the court has full power to manage and dispose of all assets of the debtor and additionally has the power to cancel a pre-packaged plan if it determines that the plan is unreasonable. Therefore, there is considerable risk that a pre-packaged plan may not be implemented.

The restructuring procedure under the *Corporate Reorganization Law* (*Kaisha Kosei-ho*) is relatively strictly controlled by the court and in general takes a longer period to complete (at shortest, one year) as compared to the restructuring procedure under the *Civil Reconstruction Law* (*Minji Saisei*) (at shortest, six months). The bankruptcy procedure under the *Bankruptcy Law* (*Hasan-ho*) generally ends within six month of its commencement.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

The general regime for the winding-up and liquidation of commercial companies which are solvent is regulated under the *Macau Commercial Code*, according to which shareholders may decide to wind up a commercial company by means of a resolution passed by a majority of the shareholders holding at least two thirds of the company's share capital. This is a non-judicial process and may be done outside of judicial proceedings. On the other hand, insolvency and bankruptcy are exclusively regulated by the *Macau Civil Procedure Code*, which includes the formal mechanisms available for the financial restructuring and the legal reorganisation of the debtor to be conducted within judicial insolvency or bankruptcy proceedings.

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Malaysia's insolvency law is governed by statutes, and supplemented by the principles of equity and the common law. The main corporate restructuring and insolvency processes are corporate voluntary arrangement, judicial management, schemes of arrangement, receivership and winding up. For personal insolvency, the debtor may propose a voluntary arrangement before he is adjudged a bankrupt. In an effort to mitigate the impact of the COVID-19 pandemic on businesses, the Government of Malaysia has introduced various policies and measures, including asking financial institutions to provide financial relief to borrowers by rescheduling or restructuring loans, extending an automatic moratorium of 6 months for loan repayments to individuals and small and medium size enterprises, giving tax exemptions and deferments to certain industries and changing the statutory threshold of both corporate as well as personal insolvency.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

The Philippines passed a COVID relief measure on March 24, 2020, under which all Philippine banks, quasi-banks, financing companies, lending companies, and other financial institutions, public and private, have been required to implement a grace period for the payment of all loans falling due within the enhanced community quarantine period (currently through April 2020) without incurring interests, penalties, fees, or other charges. Generally, the framework for bankruptcy and insolvency law in the Philippines is the *Financial Rehabilitation and Insolvency Act of 2010* ("***FRIA***") under which it is possible for a court to approve a pre-negotiated rehabilitation plan, if supported by creditors with at least two-thirds of the total liabilities of the debtor, including secured creditors holding more than 50 percent of the total secured claims and unsecured creditors holding more than 50 percent of the total unsecured claims.

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The restructuring regime in Singapore is well-developed, with essential features similar to what one will find in the U.S., and recognized as a key restructuring hub for Asia. Essential features include automatic and enhanced moratoriums, priority for rescue or DIP financing, cram-downs, pre-packaged scheme. The regime is available not only to Singapore incorporated companies, but also foreign companies with substantial connection with Singapore. Singapore's restructuring and insolvency proceedings are also capable of being recognized in a many jurisdictions across the globe. To this end, to facilitate cross-border insolvency (to promote recognition of and assistance with foreign insolvency proceedings and co-operation and communication between courts), the *UNCITRAL Model Law on Cross-Border Insolvency* was also adopted. The Singapore courts have a bench of specialist insolvency and restructuring judges, who take a proactive approach to dealing with restructuring applications.

On a related note, Singapore is also a key driver for the Judicial Insolvency Network, a network of insolvency judges from around the world which aims to encourage communication and cooperation amongst national courts by pulling together best practices in cross-border restructuring and insolvency to facilitate cross-court communication and cooperation. The network includes judges from England and Wales, Delaware, Southern District of New York, British Virgin Islands, Bermuda, the Federal Court of Australia and New South Wales, Argentina, and Brazil.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Whilst the existing framework facilities insolvency procedures, the process may prove to be lengthy and cumbersome. In the event a company or Branch/Representative/Liaison Office has not been operational for a period, the preferred approach would be to strike off/de-register such entities, which is comparatively expeditious. Corporate simplification procedures are straightforward and can be achieved within the existing legal framework. Key considerations, which are applicable to all entities, are those relating to employees and the transfer of freehold title to land. With regard to employees, it will be necessary to examine whether existing employment contracts permit transferability in the absence of which the employee's consent will be required to effect his/her transfer to another entity. If not, the employer will be required to reach a mutually agreed severance with the employee or seek the approval of the Commissioner of Labor for the same. The land ownership restrictions in Sri Lanka prohibit foreigners, foreign companies and local companies in Sri Lanka where foreigners and/or foreign companies directly/indirectly hold 50% or more shares (save and except listed companies with effect from April 1, 2018) from acquiring freehold title to lands in Sri Lanka. These restrictions extend to a share transfers as well. For instance, a purchase of shares in a local company which owns land, resulting in the direct/indirect foreign shareholding of such company exceeding 50 percent would invalidate its ownership in any property acquired by the company. The existing framework permits such a company to reduce its foreign shareholders within a specified period. Alternatively, the lands may be carved out to a property holding company structured in accordance with these land ownership restrictions.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

When a corporate entity faces financial difficulties, there is a variety of restructuring and insolvency options available in Taiwan. The four principal restructuring and insolvency regimes for companies under Taiwan law are: (i) reorganisation, (ii) composition, (iii) bankruptcy, and (iv) dissolution The choice of procedure will depend on whether there is a viable business to be rescued.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Representation of clients in insolvency and reorganization matters begins not only at the dispute stage, but involves inputs from a full spectrum of legal services. This includes the formation and documentation stages of a deal to pre-litigation dispute resolution assistance in an effort to resolve debtor and creditor disputes without formal court proceedings. Proactive pre-dispute and pre-litigation efforts are important to reducing client liabilities and working to reach productive financing solutions in debtor and creditor disputes. Where litigation is necessary, especially in involuntary third-party insolvency and reorganization claims, it is imperative that a debtor and a creditor have access to a full spectrum of legal analysis to assist with structuring a workable solution to debt obligations and to maintain business functionality. Insolvency claims and reorganizations are the jurisdiction of the specialized bankruptcy courts and as such, it is important that counsel be well-versed in claims and procedure before these specialized courts. This is particularly important since failure to meet some of the burdens placed on a company facing insolvency (such as filing deadlines and asset declaration and proof) can lead to presumptions of insolvency. Similar procedural requirements and obligations fall upon a debtor and the court appointed planners at the reorganization stage.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Please refer to our CERHA HEMPEL Insolvency & Restructuring Guide (https://www.cerhahempel.com/fileadmin/docs/publications/Makarchuk/15._CERH-insolvency-and-restructuring-laws-in-austria-cee.pdf) and our COVID-19 Insolvency Update (https://www.cerhahempel.com/fileadmin/docs/COVID_19/Insolvenzrecht-Update..pdf).

Importantly, please involve a local (Austrian) contact and expert in his/her field prior to taking any actions in Austria; there are some local peculiarities and habits that should be taken into consideration when approaching Austrian targets in a distressed M&A deal and/or restructurings or acting as a foreign shareholder, creditor or other stakeholder in an Austrian insolvency proceeding.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Recently adopted legislation sets forth a procedure for stabilisation of a merchant (company) as a tool for avoiding announcement in insolvency, which provides for possibility for restructuring of the business under the supervision of the court.

The possibility for "pre-packaged sale" of a business, which is not explicitly regulated by law, is a way for negotiating with all creditors with accepted claims.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

The principal legislation regulating insolvency and restructuring in Croatia is:

- The *Consumer Bankruptcy Act* for personal borrowers.
- The *Croatian Bankruptcy Act* for commercial borrowers (it sets out a pre-bankruptcy and bankruptcy regime).
    - Pre-bankruptcy proceedings are conducted for the purpose of establishing the legal position of the debtor and its relationship towards the creditors with the aim of maintaining its activities. The pre-bankruptcy proceedings allow the debtor to write off a part of their debts towards the creditors and to repay the remaining debt in accordance with a pre-bankruptcy settlement.
    - Bankruptcy proceedings are conducted for the purpose of collective settlement of the creditors of the bankruptcy debtor, by realizing the debtors' assets and distributing the funds to the creditors. Creditors are reimbursed from the value of the debtor's assets, according to the percentage of their claims in relation to the total amount of all creditors' debts, after the expenses of the proceedings have been paid, as well as privileged claims (e.g. employee salaries). Bankruptcy proceedings may be initiated by the company itself, by its creditors or by the Financial Agency.

- The *Law on the Procedure of Extraordinary Administration in Companies of Systemic Importance for the Republic of Croatia* (the so- called "***Lex Agrokor***") entered into force in April 2017. It regulates the restructuring of companies which are deemed to be of strategic importance and applies only to companies or groups with more than 5,000 employees and approximately EUR1 billion of debt. A restructuring plan is available in pre-bankruptcy, bankruptcy and extraordinary administration proceedings. The plan is typically drawn up by the debtor and should observe the principle of equal treatment of creditors that have equal legal position in the procedure. The restructuring plan can introduce a wide variety of measures, such as debt-to-equity swaps, debt write-offs and rescheduling, and transfers of assets to new entities. In order to be put into effect, the plan is voted on by the creditors, and the court must confirm it.

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Having undergone a financial crisis in 2013, Cyprus has updated its legislative framework for corporate restructures and insolvencies. A number of funds have acquired and invested in the acquisition of distressed portfolios and related securities. Prior to the COVID-19 pandemic there were active investment opportunities in health, hospitality, real estate and financial sectors.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Czech insolvency law traditionally provides for a moratorium, which permits a business to apply for protection against creditor actions (e.g. insolvency / bankruptcy petitions, enforcement petitions or payment claims). This gives the business additional time to operate as usual, as well as to provide for a certain amount of time to effect a restructuring, e.g. to find a new investor or customers, adjust its operations or complete a divestment.

As part of the package of measures addressing the COVID-19 pandemic, on March 31, 2020 the Czech Government approved an amendment to the *Czech Insolvency Act*, which introduces an "extraordinary moratorium". This extraordinary moratorium is a measure to address the impact of the recent bans and limitations introduced by the Czech Government on businesses and the approaching economic recession triggered by the pandemic.

The court petition for the extraordinary moratorium can be used as a standalone instrument (i.e. it can be filed without initiating an insolvency proceeding) available to debtors that were solvent before March 12, 2020 (the day of declaration of the State of Emergency). In case of pending insolvencies, the extraordinary moratorium is available only if the insolvency was commenced by the creditors.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Creditor friendly, effective and efficient insolvency processes available, and pre-packs are common.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Until recently, Egypt did not have a U.S. style Chapter 11 or UK Administration restructuring regime and companies facing financial stress could either voluntarily wind up the company or face insolvency proceedings from creditors, which could result in the end in a liquidation type process administered by the court. A restructuring regime was, however, introduced a few years ago, but the executive regulations on how to implement the legislation have not yet been issued. A handful of cases for restructuring have been filed with the courts, but the courts have struggled to implement the legislation due to the lack of executive regulations, so the practical availability of this regime is questionable at this time.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

- Consider the ability of UK subsidiaries within a wider cross border group to benefit from the government support schemes – CBILS and CLBILS schemes.
- Consideration of directors' duties advice – limited impact of the likely relaxation of wrongful trading provisions.
- Sector specific themes – retail – additional government schemes to assist retailers in relation to their outgoings, notably rent.

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In Estonia regarding insolvency there are basically two types of proceedings: bankruptcy and reorganization. Bankruptcy proceedings indicate a permanent insolvency of the company ie the assets do not cover the debts and due to the economic position of the company the situation is not temporary. The bankruptcy proceedings are carried out by the bankruptcy trustee and the majority of the creditors have a large say in what is carried out in the proceedings. In case of reorganization, the solvency issues of a company are temporary and could be solved in case the reorganization process is successful. The reorganization process allows the company to restructure its debts and reorganize its activities without the creditors being able to enforce their prior claims on the company in a different way than is foreseen in the reorganization plan. Such proceedings are more suitable for larger companies who have a good business model but have hit temporary difficulties. The reorganization proceedings are conducted by the company together with a reorganization advisor, requiring the approval of creditors prior to the court being able to enforce the reorganization plan.

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- R&I - protective shield proceedings/(pre-packed) insolvency plans (effective tool for debtor in-possession in-court restructuring) - directors duties during temporary suspension of obligation to file for insolvency under COVID-19 pandemic laws - work force restructuring (out-of-court and in-court) - furloughing and short-time work implementation - bridge and restructuring financing (using privileges under COVID-19 pandemic laws) - debt (re)financing, state aid and guarantees/subsidies - bonds and debtor warrants - tax relief measures.

- CBT - pending transactions threatened by faltering leverage/buyout finance - renegotiation of deals in light of revenue drops - resurgence of material adverse change clauses (which had mostly vanished in continental European M&A) - substantial broadening of FDI controls – stake building and other public M&A activity - distressed M&A - crisis targeted loan to own strategies.

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New legislation came recently into effect for insolvency and restructuring of companies in Israel.

In Israel, the court shall determine whether the company will enter into bankruptcy proceedings or go through financial recovery.
The court will appoint a trustee and thereafter all dealings of the creditors will be vis-a-vis the trustee. Such dealings will be transparent to the court, regulator and other constituents.

Secured creditors, such as banks, will need the court's permission in order to realize their pledges and other securities.
Insolvency proceedings are not, for themselves, a cause to terminate contracts with the debtor.

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In September 2021, the new *Code of Business Crisis and Insolvency* will replace the *1942 Bankruptcy Code*. The focus of the new legislation will be (i) introducing safeguard procedures aimed at anticipating a financial crisis and promoting the adoption of pre-insolvency procedures at an early stage, (ii) providing specific benefits for debtors that act promptly to address a financial crisis, (iii) introducing provisions designed to facilitate the restructuring of corporate groups, (iii) re-defining the requirements of debtor-in-possession financing, (iv) amending Chapter-11 type procedures in order to facilitate the restructuring of the business, (v) introducing new procedural rules, etc.

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The insolvency regime in Kenya is fairly new and shares a lot of similarities with the insolvency regime in the UK. The regime has been tried and tested successfully in the recent past on various well known companies in Kenya. The options available under the insolvency regime are Administration, Liquidation and Company Voluntary Arrangements. Schemes of arrangement have also been used in Kenya as an effective restructuring tool although they do not constitute an insolvency process.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Bankruptcy of traders is governed by the *Code of Commerce* in Lebanon, except for banks who are subject to a special regime of cessation of payment followed by liquidation. Under Article 489 of the *Code of Commerce*, which is considered in a state of bankruptcy, every trader who ceases the payment of his/her commercial debts, and every merchant who does not support his financial credibility except through means which clearly appear to be illegal. A trader is any person engaged in commerce as his usual profession, and all companies whose object of commercial nature, including joint stock companies notwithstanding their object.

An insolvency petition may be filed by one or several creditors before the competent First Degree Court sitting in bankruptcy matters. The bankruptcy court will decide on the bankruptcy after it has determined that the debt is certain, due, and indisputable. When the bankruptcy of the trader is declared, the court determines the date as of which payments have been ceased, appoints the receiver and the commissioner judge. The claw back period is eighteen months prior to the date of suspension of payment as declared by the bankruptcy judgment. The immediate effects of the bankruptcy judgment can be summarized as follows:

- Posting of the name of the bankrupt on a notice board at the door of each court and stock exchanges (Article 499 of the *Code of Commerce*).
- Relieving the bankrupt, in favor of receivers, of the management of all his property even those which may revert to him during the period of bankruptcy (Article 501 of the Code of Commerce).
- Suspending individual proceedings that are henceforth in the hands of receivers (Article 503 of the *Code of Commerce*).
- Suspending the run of interests on debts not guaranteed by a preference, a pledge, or a mortgage (Article 504 of the *Code of Commerce*).
- Forfeiting the time limit in relation to the bankrupt even if this is in favor of his creditors who hold a surety (Article 505 of the *Code of Commerce*).
- Under Article 507 of the *Code of Commerce*, there are specific actions carried out by the bankrupt during the suspect period i.e. claw back period defined under Lebanese law as being the eighteen months preceding the date of ceasing payments as declared by the bankruptcy judgment, or within the twenty days preceding that period, that are automatically void vis-a-vis the creditors. Such specific actions are:
- Gratuitous/free assignments and donations, except for small customary gifts.
- All prepayments. This means that the payment of a debt when due (not prior to maturity) is not automatically void, even if made during the claw back period.
- Giving in-lieu of payments, as well as payments of matured debts settled other than in cash, bills of exchange, promissory notes or funds transfers. This means that payment of matured debts by cash, checks, bills of exchange, promissory notes or bank transfers are valid, even if made during the claw back period and the twenty preceding days. To the contrary, payment of a debt when due by way of delivery of securities (shares, bonds, coupons, warrants and the like) is also automatically void because it is deemed similar to a giving in-lieu of payment. The settlement of a debt by a fictitious sale of assets is deemed as giving in-lieu of payment and is thus automatically void.
- Pledges or hypothecations of the bankrupt's assets to secure a pre-existing debt. A pre-existing debt is a debt that existed before taking the pledge or hypothecation. To the contrary, a pledge or hypothecation contracted during the claw back period or the twenty preceding days to secure a concomitant debt or an eventual debt would not be subject to automatic invalidation; save if the beneficiary of this security knew that the debtor has ceased payments and the bankruptcy receiver succeeds in proving that the security in question has caused a loss to the creditors.

Moreover, under Article 508 of the *Code of Commerce*, all payments made by the bankrupt for matured debts, as well as all other onerous actions (for consideration) made by the bankrupt during the claw back period, are subject to annulment (as opposed to automatic invalidation under Article 507 of the *Code of Commerce*) if the counterparty to such actions knew at that time that the debtor had ceased payments. To obtain the nullification of such actions and payments, the bankruptcy receiver must establish that they caused a loss to the creditors.

The proceedings before the First Degree Court sitting in bankruptcy matters might take one to two years before a bankruptcy judgment is rendered. It can take longer depending on the complexity of the case.

The bankruptcy judgment can be appealed before the Court of Appeal sitting in bankruptcy matters. The Court of Appeal has a statutory term of three months to decide on the appeal.

The outcome of a bankruptcy petition is not certain. It depends on the court findings as to the fulfillment of the debt requirements, and the status of the merchant.

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The main Luxembourg insolvency procedure is the bankruptcy, which is a judicial liquidation process. Reorganization proceedings also exist but are fairly ineffective in their current form. They are due to be replaced by a revamped reorganisation regime by around the end of 2020, which practitioners are eagerly expecting. Luxembourg is generally seen as a very creditor-friendly jurisdiction since, for instance, certain type of security arrangements (e.g. bank account pledges, share pledges) remain enforceable despite the bankruptcy of the Luxembourg grantor.

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Malta's insolvency law is modelled on English Law and when faced with an insolvency scenario, the choice for clients is either a creditors voluntary winding up or a court supervised winding up. Maltese Law also caters for a corporate rescue procedure whereby a four month moratorium can be approved by the court in order to avoid a bankruptcy in which case the court will appoint an administrator in order to ensure that the court approved business plan is implemented, failing which the court will proceed to a declaration of insolvency.

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Enforcing creditor rights may be more difficult during COVID-19 crisis, a lot of new laws and regulations are put in place so it is important to be fully up to date, Dutch scheme is promising restructuring tool and may be available shortly, restructuring startegies that worked during the previous crisis do not necessarily work today.

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Polish law regulations envisage two alternative routes for companies: bankruptcy and restructuring proceedings. Bankruptcy proceedings are initiated against an insolvent company. On the other hand, restructuring procedures are available for insolvent companies and those facing insolvency. A company facing insolvency should be understood as a company whose economic situation indicates that it may soon become insolvent. According to Polish law, bankruptcy proceedings generally conclude with the entire liquidation of company assets and deletion of a company from the court register. Liquidation of a company's assets may take place by way of pre-pack sale, liquidation of assets by the official receiver during proceedings (sale of all or part of an enterprise) or within a liquidation arrangement concluded by creditors during proceedings. Restructuring law envisages three court restructuring procedures (accelerated arrangement, arrangement and remedial proceedings) and one out-of-court procedure, which ends with the approval of an arrangement by a restructuring court (proceedings for approval of an arrangement). Instead of submitting a petition for a bankruptcy declaration of the company in the event of insolvency, the management board may apply for a company to be encompassed by one of the restructuring procedures. As mentioned, these proceedings can also be initiated at a time when there is a danger of future insolvency.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

The comprehensive legal advice provided by Uria Menendez covers all areas of commercial law. With regard to restructuring and insolvency matters, we provide advice to all the parties that may be involved in a company crisis, covering all kinds of situations. These include, amongst others, company or group restructuring procedures, distressed M&A, debt refinancing (including Court-protected cram-down procedures), acquisition of distressed assets within the insolvency proceedings, purchase of non-performing loans, protection of creditors' rights, directors' duties and liabilities, claw-back actions, design of collateral structures, corporate recovery as well as general advice on insolvency proceedings and related litigation.

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Corporate restructuring can take place as a formal "chapter 11-type" restructuring based on a court decision and entailing a moratorium and a possibility to enforce a composition with creditor. This procedure would typically be carried out by an insolvency practitioner. Quite often though, restructurings are made outside of the formal procedure involving out of court negotiations with creditors, sale of assets etc. Needless to say, this involves lawyers with transactional as well as insolvency experience. Bankruptcy, where a court appointed receiver sells of assets and pays of debts (based on statutory ranking) is often a very efficient tool for restructuring. The downside is the "risk" that third parties can compete for the attractive assets.

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Companies with financial difficulties can avoid immediate bankruptcy by appealing to corporate restructuring followed by insolvency. These procedures provide for a company to try and pay its debts before winding up. According to the Insolvency Law, a Turkish company may try to settle the debts with its creditors. However, the creditors also have the right to ask for the debts to be paid directly with the company or with a court of law which will dispose for a certain period for a company to pay the outstanding amounts. If the company fails to pay its debts, it is declared insolvent, case in which all if its assets will be sold in order to pay the creditors.

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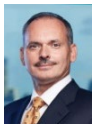

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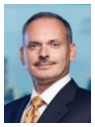

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

- Due to introduction of restrictive measures in Ukraine during the quarantine period, the National Bank of Ukraine ("**NBU**") allowed the banks not to apply the criteria, which they are normally required to apply to declare the occurrence of an event of default for the debtors/counterparties existing at 1 March 2020 and which have undergone debt restructuring (the "**Relief**"). The **Relief** is available if the following conditions are met: the need for debt restructuring is caused by the financial difficulties of the debtor/counterparty as a result of the introduction of quarantine and restrictions due to the spread of Coronavirus; the bank restructured the debt between March 12 and September 30, 2020; the bank acknowledged the advisability of short-term debt restructuring by August 1, 2020; the bank proved the feasibility of carrying out long-term debt restructuring based on assessment of the debtor's/counterparty's ability to overcome financial difficulties, resume debt service and ensure its repayment, within the period provided by the terms of the restructuring; amendments related to debt restructuring do not reduce the cash available for debt service by more than 10% compared to the amount available under the terms of the agreement that are in force at the effective date of the Resolution. In practice, the Resolution, via introducing the Relief, enables the banks not to account overdue indebtedness arising during the quarantine period as troubled, thus, relieving the banks from allocating provisions for the full amount of such indebtedness. In its letter posted on the **NBU** website, the regulator

- also gives a number of practical recommendations to banks for debt restructuring as follows: only the loans to the borrowers, who are facing financial difficulties due to pandemic restrictive measures and are unable to service loans on time, can be restructured. The terms of the restructuring are determined by the bank taking into account the borrower's economic needs; the restructuring procedure can be initiated either by the banks or by their clients. The banks shall receive from corporate clients evidence of significant temporary loss of income or work stoppage; the physical presence of clients in the bank's office is not required for the restructuring. The bank independently determines the procedure for submitting/processing documents for restructuring, preferring to use remote communication channels; the restructuring of loans of medium- and large-sized businesses should be considered individually, taking into account the latest financial statements, the current financial situation, the vulnerability of sectors and enterprises to the current economic crisis and the prospects for their recovery; banks should not worsen the terms of financing as a result of the restructuring. The restructuring should not lead to an increase in the effective interest rate. The banks should not require clients to pay any explicit or hidden fees for the restructuring due to the circumstances of the pandemic. The limitations caused by the quarantine gave rise to expectations across the market of possible introduction of relief measures for all the categories of borrowers. However, statutory relief has only been granted for consumer loans. The NBU Resolution enabled granting Relief by the banks to their commercial borrowers on a voluntary basis.

- A new law adopted on April 13, 2020 provides for a possibility to reduce the rent for tenants prevented from fully using premises due to the restrictive measures imposed for the quarantine for the period when the premises could not be used due to the quarantine.

- Ukrainian state banks get more opportunities to deal with NPLs. Under governmental decree adopted on April 15, 2020, Ukrainian state-run banks (i.e. banks which are at least 75 percent owned by the state) are authorized to take various restructuring measures with respect to non-performing loans and portfolios. It has been quite a long time since the problem of state banks being unable to effectively write-off or sell NPLs to the market has remained unresolved. As a result, the state banks had to continuously maintain and service NPLs and arrange for significant loan loss provisioning which was burdensome for their balances and affected their financial results. This should change once the banks follow the aforesaid regulation. Given that Ukrainian state-run banks have over a long time accumulated significant NPL portfolios, Ukrainian NPL market may now see some new large portfolios for sale. The new regulation will allow the banks to choose among various types of dealings with NPLs, including assignment/sale of loans at discount, partial write-off, debt cancellation, equity conversion. This would also give flexibility to potential purchasers participating in public auctions and offering/negotiating attractive pricing and other terms. Nevertheless, there are certain restrictions and procedures which would need to be complied with, and carried out, by the Ukrainian state-owned banks with a view of ensuring the best economic result. The state banks (i) would have to take into account net present value of all such possible options, (ii) would not be able to sell/assign any such loans to the respective borrowers/their beneficiaries or related parties, (iii) would need to arrange for public auction, etc. At the same time, with all the restrictions applicable to Ukrainian state banks, they would still be interested in pursuing NPLs sales in order to effectively manage their loan portfolios and release significant amounts of provision.

- On March 18, 2020, the President of Ukraine signed a new law that introduces social tax, land, and property tax incentives during the quarantine period to include tax exemptions, postponement of tax audits and possibility to postpone tax payments. By possibility of postponement we mean that statutory deadlines for payment are not changed, but payment can be delayed with no penalty and interest. Under the new law the businesses will enjoy: (i) a 2-month exemption from land tax, which is expected to be a benefit for heavy industry, mining, power production; (ii) a 2-month exemption from real estate tax on non-residential property is supposed to help office centers, hotels, shopping malls, supermarkets; (iii) an option to postpone social tax payment on employees' salaries due for March and April; (iv) theoretically, businesses have option to delay payment of payroll taxes (income tax and military levy) until May 31, but it is not clear how this will apply in practice, since the taxes are employees' cost and are collected from the gross salary when the salary is paid. Furthermore Ukrainian banks may be unwilling to process wire transfers of salaries to employees' bank accounts if they see no evidence of income tax withholding; Option to postpone profit tax payment for 1Q 2020 (effectively only up to 10 extra days for payment of tax in May without penalty); There are no VAT benefits, VAT continue to operate in a usual way (including tax audits of VAT refunds and penalties, if any). There are also no exemptions for excise tax and royalties for mineral extraction.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

The United Arab Emirates provides a framework for the restructuring and insolvency of companies and individual traders, which is contained in the *Bankruptcy Law* (*UAE Federal Law No. 9 of 2016*). The amended *Commercial Companies Law* (*UAE Federal Law No. 8 of 2015*) contains provisions for the dissolution of a company. The Bankruptcy Law applies to any company governed by the provisions of the *Commercial Companies Law*, licensed civil companies, public sector companies (i.e., those wholly or partially owned by the federal government or an Emirate government), individual traders, and businesses formed in the free zones (except those in the financial free zones of the Dubai International Financial Centre and the Abu Dhabi Global Market, which have their own bankruptcy rules).

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Anguilla is the perfect location for international transactions of this nature.

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Argentine insolvency laws constitute public law and may no be avoided. They override many contractual provisions. A foreign guarantee may not be recognized in Argentina.

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The *Bankruptcy and Insolvency Act*. Barbados is based on Canadian legislation and so there are some similarities in approach.

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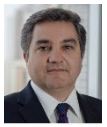

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Brazil has been dealing a lot with insolvency/restructruring in the past few years because of the so called Car Wash investigations. For that reason, the Brazilian laws and regulations on the matter have been tested many times by some of the largest Brazilian conglomerates and we have a lot of experience in the field. One key feature of the Brazilian Chapter 11 reorganisation is the ability for a company to divest of certain assets in a way that the buyer is insulated from certain past liabilities of the company, which does not happen if the assets are acquired outside of the Chapter 11 proceedings. Also, the fact that the Brazilian Real has devaluated in the past months vis-a -vis the U.S. Dollar and the Euro should work as an additional incentive for distressed M&A in the country.

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Upon an insolvency a BVI insolvency office holder has a very significant degree of discretion (albeit ultimately supervised by the Court) as to how he manages the insolvency including how he realizes the value of the insolvent estate. Notwithstanding that, when asset markets are confused, as now with the pandemic, the office holder will need to ensure that he is seen to have established a reasonable price. It is therefore likely that BVI liquidators will be more likely to seek the court's permission or direction as to how that is to be done in the current climate. Creditors' committees may end up being more widely used and active, too. It is also likely that creditors' claims buyers will be more active than usual in BVI liquidations, as those with cash will be king.

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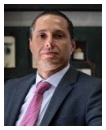

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

- Safe for some tax related measures (i.e. deferral of filing of tax returns) no Coronavirus crisis relief measures (like payroll or income support) in place at the moment because of lack of funding from Holland.
- No general debt moratorium during the Coronavirus crisis.
- Cutting salary costs and/or lay-off of staff/employees outside suspension of payments/legal moratorium or bankruptcy proceedings is most of the time very costly and arduous.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Local Insolvency Proceedings

- Jamaica's insolvency law is largely influenced by the *Canadian Bankruptcy and Insolvency Act*. Jamaica's insolvency regime allows not only for someone who is insolvent or bankrupt to seek to be rescued but also a "person facing imminent insolvency" (that is, likely to become insolvent within 12 months). It involves a largely out-of-court rescue proceeding is by way of the proposal mechanism. It however requires court approval once the statutory approval requirements have been met. Provision has however been made that if there is no objection, the relevant court approval can be deemed to have been obtained.
- A person may involuntarily become bankrupt on the application of one or more creditors owed no less than J$300,000 (approximately USD$2300) on an unsecured basis and where an act of bankruptcy has been committed within 6 months immediately preceding the filing of the petition. Such an application, once filed, cannot be withdrawn without the consent of the court and is only likely to be

- withdrawn by the court where the court is satisfied that the debtor is solvent and other creditors will not be prejudiced by the withdrawal.
- Certain protections are extended to certain capital market transactions which allow those transactions to be completed and setting off and netting to take place notwithstanding the stays of proceedings that would ordinarily prohibit such action.

Cross-Border Insolvency Proceeding

- Jamaica has adopted the *Uncitral Model Law on Cross-Border Insolvency* ("*Model Law*"). It acknowledges that it may be necessary to bring action in different jurisdictions and: (a) affords a right of access to representatives and creditors of foreign insolvency proceedings to the courts of a local jurisdiction in order to seek assistance elsewhere; (b) establishes a simplified procedure for recognition of qualifying foreign proceedings allowing for time saving and greater certainty; (c) empowers the court to make available the relief considered necessary for the most orderly and fair conduct of the cross border proceedings; and (d) allows for greater cooperation and coordination of concurrent proceedings concerning the debtor so as to encourage and foster results which protect and maximize the value of the debtor's assets and facilitates, where possible, rescue.
- Where proceedings are commenced in a jurisdiction other than its country of incorporation or formation, the Insolvency Regulations provide that a foreign representative may apply directly to the court for the foreign proceedings in respect of which the person was named as the foreign representative to be recognized in the other jurisdiction so as to effectively be able to take certain actions or have certain results in that jurisdiction.
- Cooperation and coordination is therefore the overall objective of the cross border provisions in the *Regulation*s and in the *Model Law*. The Regulations and the Model Law do not therefore attempt to be overly prescriptive about what steps the foreign representative should take or what orders he should seek or what form such cooperation should take. The Regulations and the *Model Law* therefore are very broad, leaving much flexibility to the courts to interpret its provisions having regard to, the circumstances of each case but the underpinning of the principle of universality appears evident. Notwithstanding the principles of comity and universality, however, courts guard closely their right to refuse applications that they consider to would be contrary to "public policy".

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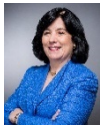

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

In Peru, bankruptcy proceedings are regulated by the *General Insolvency System Law* (the "***Law***") in force since of August 8, 2002 and amended in July 2008. This law has the following characteristics: Purpose: The effective reclamation of the credits in order to protect the creditors' rights and the timely reestablishment of the payment chain. Achievements: Has prevented the closing down of many companies declared insolvent by the Peruvian Insolvency Authority, known as the National Institution for the Protection of Free Competition and Intellectual Property ("**INDECOPI**"), providing alternatives to bankruptcy such as companies' restructuring.
Options available for creditors or debtor:

- Restructuring of the company; or
- Liquidation of the company.

Bear in mind that the law does not permit any creditor to directly claim the bankruptcy of a company. Bankruptcy will only be declared if the creditors choose to liquidate the company and the assets sold are not enough to pay all the company's debts.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

We have several articles published in Hamel-Smith Forum, our firm's legal publication. The articles should provide some general insight on insolvency/restructuring in our jurisdiction and are available in the below editions:

- http://trinidadlaw.com/wp-content/uploads/2017/05/forum_April_2015.pdf
- http://trinidadlaw.com/wp-content/uploads/2017/05/forum_August_2015.pdf
- http://trinidadlaw.com/wp-content/uploads/2017/05/Forum_July_2016.pdf http://trinidadlaw.com/wp-content/uploads/2017/05/Forum_October_2016.pdf
- http://trinidadlaw.com/wp-content/uploads/2017/05/Forum_March_2017.pdf

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Insolvency proceedings in Canada often involve court supervised processes. In distressed M&A the due diligence must be run efficiently and on a short time frame.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

The Canadian insolvency regime recognizes the benefits of restructuring an insolvent business rather than forcing them into liquidation or bankruptcy and in many instances insolvent entities will have access to a flexible restructuring regime allowing for creative arrangements and workouts. However, restructurings are typically more successful (and clients have more options) if they seek advice early. For this reason, it is recommended that clients start to consider their options (and seek the necessary advice) as soon as possible.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

In Canada, bankruptcy and insolvency is subject to federal jurisdiction and oversight, primarily pursuant to two federal statutes: the *Bankruptcy and Insolvency Act* ("***BIA***") *and the Companies' Creditors Arrangements Act* ("***CCAA***"). Both statutes provide the superior Court of each province (including the Court of Queen's Bench in Manitoba) are authorized to oversee and adjudicate upon insolvency matters. Both the ***BIA*** and ***CCAA*** provide considerable flexibility to the Court in dealing with insolvency matters. In addition, both the ***CCAA*** and the "proposal" provisions under the ***BIA*** also allow for "debtor-in-possession" restructuring proceedings, similar in concept to Chapter 11 proceedings in the United States of America. A common approach to realization on secured assets involves the court appointment of a Receiver, who is required to be a Licensed Insolvency Trustee in Canada and who then takes conduct of the business and assets of the debtor pursuant to the terms of a detailed Court Order.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Insolvency proceedings in Canada often involve court supervised processes. In distressed M&A the due diligence must be run efficiently and on a short time frame.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Delaware is the leading jurisdiction for incorporation in the USA, to such an extent the about half of the Fortune 500 companies, and two thirds of the companies traded on the New York Stock Exchange, are incorporated there. As a consequence Delaware has a very corporate law-sophisticated judiciary at the state level, and its federal bankruptcy court is a leading USA jurisdiction for insolvency proceedings. Richards, Layton & Finger, the Lex Mundi firm in Delaware, has the leading Delaware practice in both legal fields, as well as in areas involving alternate entities such as LLCs and Delaware Statutory Trusts.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Hawley Troxell's creditor rights and bankruptcy attorneys have significant experience in complex commercial creditor rights and bankruptcy matters for national and local clients. We represent national, state chartered, community, and mortgage banks, consumer and commercial lenders, agricultural finance lenders, manufactured home finance lenders, as well as a wide variety of trade and other creditors. Our services include: Lender Liability Defense & Regulatory Compliance; Secured Transactions; Foreclosures, Collections & Bankruptcy; and Commercial Litigation. Our creditor rights and bankruptcy group works closely with other practice areas, including banking, litigation, employment, and tax.

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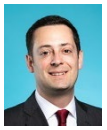

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

The District of Kansas is one "District," but there are three courthouses within the District located in Kansas City, Topeka, and Wichita. Corporate bankruptcy cases are filed under Chapter 7 (liquidation) or Chapter 11 (typically reorganization) of the *United States Bankruptcy Code*. Foreign corporations may be able to gain access to U.S. bankruptcy courts via Chapter 15 of the *United States Bankruptcy Code*. Foulston Siefkin LLP has significant experience representing lenders and other creditors in bankruptcy cases and has offices in Kansas City, Topeka, and Wichita.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

A Chapter 15 gives the foreign debtor a way to gain access to U.S. Bankruptcy Courts for the purpose of administering assets or taking action for the debtor in this country.

A foreign company may choose to file a case under Chapter 7 or Chapter 11 of the *U.S. Bankruptcy Code* if its assets or entanglements with U.S. commerce are sufficiently complex.

For companies in the energy and energy service industry sector, a Chapter 11 reorganization plan may not be an option. Lenders are going to put pressure on the companies to sell what they have, either inside or outside of a bankruptcy setting.

USA, Massachusetts
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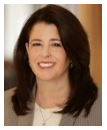

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Our bankruptcy and restructuring team has decades of experience in addressing insolvency related issues in times of crisis and strategizing to minimize the risk of bankruptcy either for your business or as a creditor of another business. We can work with you to find creative and cost-effective solutions to the problems posed by the disruption to business from COVID-19 as well as provide introductions to potential financing sources, equity partners, and buyers.

Our Debt Financing team has extensive experience advising our borrower clients facing adverse market conditions. We are prepared to discuss the effect of these adverse conditions on the borrower's ability to satisfy its financial ratio covenants and to maintain sufficient liquidity for its operations. We will also suggest potential strategies for waivers, amendments and other accommodations to its lenders that address these issues.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

The primary mechanisms for restructuring or otherwise addressing insolvency in the United States are "Chapter 11" reorganizations and "Chapter 7" liquidations. Chapter 11 and Chapter 7 refer to chapters of the *United States Bankruptcy Code* ("***Bankruptcy Code***"). Chapter 11 generally involves implementation of an "automatic stay" to prevent creditors from taking collection action against the debtor while the debtor implements an organized sale process and/or proposes a plan to reorganize subject to the requirements of the Bankruptcy Code. Chapter 7 generally involves the appointment of a trustee to liquidate the debtor's assets for the benefit of creditors. The United States has adopted the *UNCITRAL Model Law on Cross-Border Insolvency 1997* with certain alterations, which is codified in Chapter 15 of the ***Bankruptcy Code***. Under certain conditions, Chapter 15 permits a foreign representative to seek recognition in the United States of a foreign insolvency proceeding. The ***Bankruptcy Code*** is a federal law that applies throughout the United States, the District of the Columbia, and U.S. territories. In lieu of utilizing the liquidation or reorganization procedures of the ***Bankruptcy Code***, each state has dissolution procedures for winding up entities organized in that state. In addition, many states (including North Carolina) have other alternative mechanisms for winding up, such as an assignment for the benefit of creditors or appointment of a state court receiver. In North Carolina, these alternative mechanisms are comparatively rarely used.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

U.S. corporate bankruptcy law is statute based (Title 11 of the *United States Code*, the "***Bankruptcy Code***") and is a specialize field of practice. Moreover, unlike the insolvency laws of many countries, an insolvent entity that chooses to file for reorganization under Chapter 11 of the ***Bankruptcy Code*** continues to be managed by officers and directors of the company and not a court-appointed monitor or trustee. Ohio state law has its own insolvency-related proceedings, including state court-supervised receiverships, assignments for the benefit of creditors (rare) and other actions available under the Ohio version of the *Uniform Commercial Code* (e.g., friendly foreclosures, secured party sales, vendor reclamation and adequate assurance rights). In addition, Ohio law gives creditors the ability to unwind or recover a debtor's actual and constructive fraudulent transfers, preferential transfers or illegal dividends.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Crowe & Dunlevy is one of the only firms in the United States with three members of the American College of Bankruptcy. The firm's insolvency and restructuring attorneys are regularly selected as Best Lawyers "Lawyer of the Year" in their primary region of practice. Crowe & Dunlevy has a national practice in representing debtors and creditors in multiple jurisdictions including Oklahoma, Texas, Delaware, New York, Florida, New Mexico, Kansas, Colorado, Wyoming, Alabama, Arizona and California. Crowe & Dunlevy has significant experience and bench strength in chapter 11 restructuring/reorganization in representing debtors and secured/unsecured creditors. Industry expertise includes oil & gas, energy, real estate, retail, healthcare, telecommunications, franchise, restaurants, hospitality/hotel to name a few.

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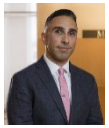

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

Insolvency/bankruptcy law is based on the *U.S. Bankruptcy Code* so the primary law is the same across the 50 states in the U.S. Certain issues such as exemptions and fraudulent conveyance will have Tennessee specific law, either statutory or common law.

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Tips for foreign lawyers when speaking to clients about restructurings or insolvencies in your jurisdiction

U.S. bankruptcy law applies to insolvencies in the U.S. Virgin Islands.

About Lex Mundi

Lex Mundi is the world's leading network of independent law firms with in-depth experience in 125+ countries.

Lex Mundi member firms offer clients preferred access to more than 22,000 lawyers worldwide – a global resource of unmatched breadth and depth. Each member firm is selected on the basis of its leadership in – and continued commitment to – its local market. The Lex Mundi principle is one independent firm for each jurisdiction. Firms must maintain their level of excellence to retain membership within Lex Mundi.

Through close collaboration, information-sharing, training and inter-firm initiatives, the Lex Mundi network is an assurance of connected, on-the ground expertise in every market in which a client needs to operate. Through its global client service platform, Lex Mundi members are able to handle seamlessly their clients' most challenging cross-border transactions and disputes.

Lex Mundi member law firms are located throughout Europe, the Middle East, Africa, Asia and the Pacific, Latin America and the Caribbean and North America. Through Lex Mundi's nonprofit affiliate, the Lex Mundi Pro Bono Foundation, members also provide pro bono legal assistance to social entrepreneurs around the globe.

Lex Mundi
World Ready

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