



An overview of temporary measures relating to Bankruptcy and Insolvency laws in response to the Covid-19 pandemic in the Asia Pacific Region.

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Covid-19: Temporary Measures in Bankruptcy and Insolvency Laws in Asia Pacific

Introduction

The COVID-19 pandemic has had a tremendous and unprecedented impact on the global economy. To mitigate this, many governments have introduced temporary relief measures to help local businesses.

Such measures include temporary changes in the application of their Insolvency and Bankruptcy laws. In this report, Mackrell International member firms Asia Pacific provide responses to frequently asked questions about these changes.

Jurisdictions

1. Hong Kong
2. India
3. Malaysia
4. New Zealand
5. Japan
6. Singapore
7. South Korea

1. What are the laws or regulations introduced in your jurisdiction to curtail the impact of Covid-19 on companies and individuals?

- (i) The Hong Kong Monetary Authority (“HKMA”) has introduced temporary measures proposed by Authorized Institutions (“AI”), essentially banks to grant a six-month loan repayment holiday for small to medium sized enterprises (“SMEs”).
- (ii) Hong Kong proceeded with the Anti-Epidemic Fund 2.0 earlier April 2020 introducing a set of new enhanced terms for the 80%, 90% and special 100% guarantee loans available for SMEs.
- (iii) Specific sectors of SME businesses (i.e.: retail outlets, travel agencies, restaurants, cinemas, entertainment facilities, transport operators) were eligible to apply for the 100% loan guarantee program with the government funding HK\$20 billion as assistance under Covid-19.
- (iv) The HKMA also released HK\$1 trillion of lending capacity to their clients (individual/corporate) which in term helped increase banking system liquidity for locals and international clients.
- (v) The Legislative Council passed rounds of anti-epidemic fund and other relief measures, including an HKD\$81 billion Employment Support Scheme (“ESS”), enabling qualified business employers to retain their employees and provide wages by way of partial support from the government.
- (vi) However, Hong Kong does not have any formal or statutory corporate rescue procedure at this moment.

2. Are there any temporary relief measures against winding up offered to companies in debt?

- (i) The Companies Ordinance sets out the procedures for implementing a scheme of arrangement in Hong Kong. The Courts may appoint a provisional liquidator if there is a prima facie case after a winding-up petition is presented against a company. This allows a provisional liquidator to achieve a corporate rescue.
- (ii) However, due to the Covid-19 pandemic, the corporate rescue options in Hong Kong are far from optimal as the arrangement is a time-consuming process in Court proceedings.
- (iii) The legislative development process of statutory corporate rescue regime has been slow-moving in Hong Kong. There have not been much concrete developments since July 2014.

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- (iv) However, in March 2020, the Hong Kong government announced that they will introduce a new round of corporate rescue bill in the first half of the 2020/2021 legislative session. Despite the new development in the current climate under the influence of the pandemic, completion and passing of the bill will take time and is unlikely to give immediate assistance to troubled businesses in Hong Kong.

3. Are there any temporary relief measures against bankruptcy extended to individuals?

- (i) Currently, Hong Kong does not have any temporary relief measures available to individuals towards bankruptcy. Instead, the government has implemented a few temporary relief measures to assist.
- (ii) As mentioned above, ESS program provides wage subsidies of up to HK\$9,000 per month per employee to Mandatory Provident Fund-contributing employers, under the condition that they retain their current employees who may be made redundant otherwise, and that they spend all the wage subsidies on paying wages to their employees.
- (iii) Another relatively significant relief is the Cash Payout Scheme whereby each Hong Kong Permanent Identity Card Holder aged 18 or above is eligible to a one-off subsidy payment of HK\$10,000.

4. Are there any other changes to bankruptcy and insolvency laws in your jurisdiction due to the Covid-19 pandemic?

Aside from the above-mentioned schemes, the Hong Kong government has not introduced any new insolvency law relief measures (such as a formal or statutory corporate rescue procedure) which are similar to other common law jurisdictions such as Singapore and the United Kingdom.

5. Restructuring outside insolvency - Are there measures put in place in your jurisdiction to encourage the restructuring of companies?

There are no specific measures put in by the Hong Kong government to encourage the restructuring of companies. As mentioned above, the Hong Kong government had banks grant various loans and repayment schemes to SMEs as an attempt to assist.

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1. What are the laws or regulations introduced in your jurisdiction to curtail the impact of Covid-19 on companies and individuals?

The novel coronavirus ('COVID-19') forced the government to initiate a series of lockdown measures in India, beginning from 24th March 2020. However, as seen globally, despite all the precautionary measures taken by various governments, we are once again witnessing a rise in the number of infections.

The Finance Minister introduced a slew of fiscal policies in a series of speeches between 13th to 17th May 2020, as part of the Prime Minister's "Atmanirbhar Bharat" (i.e. self-sufficient India) campaign; proposing to bring about reforms to a wide gamut of industries and sectors and to the relatively nascent Insolvency and Bankruptcy Code, 2016 (which shall mean and include all the Regulations duly notified under the Insolvency and Bankruptcy Code, 2016 and forming a part thereof). The Code is the primary bankruptcy legislation in India, often read in conjunction with the provisions of the Companies Act, 2013, which provided for the winding up of companies prior to the enactment of the Code.

2. Are there any temporary relief measures against winding up offered to companies in debt?

Yes, some of the key developments to date are:

(i) Increasing the Threshold Amount

The monetary threshold of default for filing/initiating an insolvency resolution process under the Code has been increased to INR 10,000,000/- from the previous threshold amount of INR 100,000/-.

(ii) Excluding the Lockdown Period from the timeline period of 330 days

A new regulation has now been inserted to the Corporate Insolvency Resolution Process Regulations under the Code, which stipulates that the period of lockdown imposed by the Central Government shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown. The Hon'ble Supreme Court of India, has also ordered in a related matter that, '*any interim order/stay order passed by this Appellate Tribunal in any one or the other appeal under the Code shall continue till next date of hearing, which may be notified later.*'

(iii) Suspension of fresh filings

The Finance Minister made it clear that the no fresh insolvency proceedings will be taken up for a period of one year from the date of the 1st notification (i.e., 25th March 2020). Needless to say, that the amendment provisions shall not be applicable to any default that has occurred before 25th of March 2020. The amendment legislation also puts an embargo on resolution professionals from filing applications against all such defaults that are covered under the aforesaid exemption.

(iv) Leeway for Micro, Small and Medium Enterprises ('MSMEs')

The recent amendment with respect to MSMEs inter alia permits a person/ person acting in concert with a promoter/ promoter himself to place bids to acquire an MSME under corporate insolvency process, regardless of the fact that such person(s) are promoters and/or may have one or more accounts that have been classified as non-performing assets (NPAs). This is an exemption to the general rule that inter alia (i) no promoter/promoter group entity; or (ii) person(s) whose accounts have been classified as an NPA, shall be permitted to take part or place their bids in respect of a related company that is under corporate insolvency process under the Code.

(v) Re-scheduling of payments

The Reserve Bank of India ('RBI') had permitted various banking channels to grant a moratorium to their customers for repayment of term loans falling due between 1st March 2020 to 31st August 2020 in order to improve access to working capital and ensure continuity of viable businesses.

(vi) Definition of 'default' revised

As per recent amendments, the term 'default' under the Code has been re-defined to specifically exclude 'COVID related debts'.

3. Are there any temporary relief measures against bankruptcy extended to individuals?

Presently, India does not have any relief measures, temporary or otherwise, available for bankruptcy proceedings in respect of individuals.

4. Are there any other changes to bankruptcy and insolvency laws in your jurisdiction due to the Covid-19 pandemic?

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Yes, there are some policy changes in the pipeline. The insolvency law committee and a group of ministers are considering further amendments to the Code, proposed to be introduced after they are passed in the ongoing Winter Session of the Indian Parliament, including but not limited to:

(i) Pre-packaged scheme for corporate insolvencies

These have gained popularity in the United States and United Kingdom – involving an agreement between the stressed company, its creditors and a prospective buyer, before initiating corporate insolvency proceedings.

(ii) A special framework for MSMEs

Likely to permit insolvent debtors to retain possession of the Company till a resolution is arrived at. Needless to say that all important decisions, however, will have to be ratified by the Committee of Creditors ('CoC').

(iii) Steps to reduce delay in admission and disposal of cases

These include formation of more National Company Law Tribunals ('NCLTs'), the adjudicating body under the Code, throughout the country.

6. Restructuring outside insolvency - Are there measures put in place in your jurisdiction to encourage the restructuring of companies?

The Companies Act, 2013 permits restructuring of companies in the normal course, however, more recently, in August 2020, the RBI issued a circular on 'Covid-19 related Stress' (Covid Resolution Framework) ('CRF') which enables lenders to implement a resolution plan in respect of eligible borrowers without a change in ownership while keeping such exposures as standard. As per the CRF, banks have to invoke the resolution framework not later than 31st December 2020 and the plan needs to be implemented within 180 days.

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1. What are the laws or regulations introduced in your jurisdiction to curtail the impact of Covid-19 pandemic on companies and individuals?

The government has introduced a number of subsidies for small and medium-sized enterprises and sole proprietors (see Q2 and Q3), and made a temporary amendment to the Company Act to reduce the burden of holding a company's annual shareholders meeting.

Under the Company Act, a company with a board of directors is required to provide its shareholders with a business report and financial statement when sending notice of its annual shareholders meeting (the notice must be conducted in writing). However, the temporary amendment allows companies to deem that requirement fulfilled if a company (i) continuously posts the data of its business report and financial statement on its website from the date when the company is required to send its notice until three months after the annual shareholders meeting and (ii) provides the URL of the above website. This temporary amendment was effective only from May 15, 2020 to November 15, 2020.

2. Are there any temporary relief measures against winding up offered to companies in debt?

There are three temporary relief measures for companies corresponding to the Covid-19 pandemic.

(i) Subsidies for small and medium-sized companies to continue their businesses

A company is entitled to receive up to two million JPY if (i) its paid capital is less than one billion JPY, (ii) it had sales before 2020 and intends to continue its business, and (iii) sales in at least one month of the current year decreased by more than 50% compared with the same month in the previous year.

(ii) Subsidies for small and medium-sized companies to pay their rent

A company is entitled to receive up to six million JPY if (i) its paid capital is less than one billion JPY, (ii) it had sales before 2020 and intends to continue its business, and (iii) either sales in at least one month of the current year decreased by more than 50% compared with

the same month in the previous year or a sales in three consecutive months of this year decreased by more than 30% compared with the same month in the previous year, and (iv) the company pays rent for land or a building.

(iii) Subsidies for small and medium-sized companies to pay leave allowance to their employees

A company is entitled to receive this subsidy if (i) sales in at least one month of the current year decreased by more than 5% compared with the same month in the previous year and (ii) the company pays leave allowance to their employees. The amount of the subsidy varies depending on the size of the business and other factors.

3. Are there any temporary relief measures against bankruptcy extended to individuals?

The three subsidies described in Q2 are also available to sole proprietors. The maximum amount of subsidies (i) and (ii) for sole proprietors are one million JPY and three million JPY, respectively.

4. Are there any other changes to bankruptcy and insolvency laws in your jurisdiction due to the Covid-19 pandemic?

So far, there have been no changes to bankruptcy and insolvency laws corresponding to the Covid-19 pandemic.

5. Restructuring outside insolvency - Are there measures put in place in your jurisdiction to encourage the restructuring of companies?

So far, there have been no specific measures to encourage the restructuring of companies corresponding to the Covid-19 pandemic.

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1. What are the laws or regulations introduced in your jurisdiction to curtail the impact of Covid-19 pandemic on companies and individuals?

The Malaysian Parliament has passed the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 (“COVID Act”) and it came into force on 23 October 2020 as part of the measures by the Malaysian Government to counter the impact of the COVID-19 outbreak on Malaysian individuals and businesses. The COVID Act will be in force for 2 years (except where period of operation is mentioned for respective provisions) and introduced, amongst others, modification to Malaysian Legislation and other temporary relief measures.

Apart from that, the Insolvency (Amendment) Act 2020 (“Insolvency Amendment Act”) was also gazetted on 22 October 2020 to allow an increment of the minimum debt threshold for bankruptcy petitions under the existing Insolvency Act 1967 (“Principal Insolvency Act”).

Last but not least, the Companies Commission of Malaysia (CCM) has issued a directive on temporary winding up protection and increment of debt threshold for the statutory demand notice to aid distressed companies.

2. Are there any temporary relief measures against winding up offered to companies in debt?

As mentioned above, the CCM has introduced a few temporary winding up protection. Following that, the Minister of Domestic Trade and Consumer Affairs has issued a directive pursuant to section 466(1)(a) of the Companies Act 2016 (“CA”) prescribing that the minimum debt threshold to issue a statutory demand against a company is increased from RM10,000 to above RM50,000 effective from 23 April 2020 to 31 December 2020.

Additionally, the Minister has also gazetted the Companies (Exemption) (No.2) Order 2020 (“Exemption Order No.2”) prescribing that a company is granted a period of 6 months instead of 21 days to respond to a statutory demand before a creditor is allowed to file a winding-up petition. This only applies to statutory demands served within the period of 23 April 2020 to 31 December 2020. These measures aim to assist companies that are facing cash flow problems due to Covid-19 pandemic to restructure and seek additional financing or Corporate Rescue Mechanisms provided under the CA to resolve its debt.

3. Are there any temporary relief measures against bankruptcy extended to individuals?

The COVID Act provides that the minimum debt threshold for creditors to present a bankruptcy petition against a debtor is temporarily increased from RM50,000 to RM100,000 effective from 23 October 2020 until 31 August 2021 which may be extended by the Minister not exceeding the lifespan of the COVID Act. However, this temporary relief will not affect any proceedings, actions or other matters required to be done under the Principal Insolvency Act which are still pending immediately before 23 October 2020.

4. Are there any other changes to bankruptcy and insolvency laws in your jurisdiction due to the Covid-19 pandemic?

Apart from the temporary relief measures introduced by the COVID Act, the Malaysian Parliament has also passed the Insolvency Amendment Act which amended section 5 of the Principal Insolvency Act by increasing the minimum debt threshold from RM50,000 to RM100,000 to present a bankruptcy petition against the debtor. The amendments also grant the Minister power to further vary the amount of debt for a specific time period if the Minister is satisfied that there are special circumstances and that it would not be contrary to public interest to do so.

However, section 3 of the Insolvency Amendment Act provides that the above amendments will not affect any bankruptcy petition presented before 22 October 2020.

Although it would appear that the abovementioned amendments are very similar with the measures introduced by the COVID Act, the key difference here is that the increment of the minimum debt threshold by the COVID Act is just a temporary measure and will lapse on 31 August 2021 whereas the increment of the minimum debt threshold by the Insolvency Amendment Act is not confined to a time frame and may be further extended at the Minister's discretion.

On top of the various Corporate Rescue Mechanisms which are already available under the CA such as Corporate Voluntary Arrangement, Judicial Management and Scheme of Arrangement, or alternatively restructuring debt through the Corporate Debt Restructuring Committee ("CDRC"), the Malaysian Government has introduced several relief measures under the PRIHATIN Economic Stimulus Packages and the National Economic Recovery Plan (PENJANA) to assist companies mitigate the economic impact of the pandemic.

Among measures that have been introduced to sustain business operations include:

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- (i) An automatic deferment of all loan/ financing repayments by banking institutions to all individuals and Small Medium Enterprises (SMEs) for a period of 6 months effective from 1 April 2020 with liberty to apply for an extension of the moratorium period subject to each bank's assessments;
 - (ii) Offering several financing facilities such as Special Relief Facility ("SRF") etc and special financial grants to SMEs and Micro SMEs;
 - (iii) Accelerated Capital Allowance ("ACA") for machinery and equipment expenditure from 1 March 2020 to 31 December 2020;
 - (iv) Tax deduction for renovation costs of business premises from 1 March 2020 to 31 December 2020 up to RM300,000 and other tax relief measures;
 - (v) Electricity discount and reduction of rentals to SMEs tenants from April 2020 to June 2020;
 - (vi) Wage subsidies to employees subject to approval and allowing renegotiation of employment terms including pay cuts and unpaid leave.

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1. What are the laws or regulations introduced in your jurisdiction to curtail the impact of Covid-19 pandemic on companies and individuals?

New Zealand passed a tranche of new Acts in response to the COVID-19 pandemic, as well as amending existing legislation to make it fit for purpose. Several new pieces of legislation and regulations were enacted to assist businesses and individuals through the pandemic, including the following Acts:

- (i) COVID-19 Response (Requirements for Entities—Modification and Exemptions) Act 2020;
- (ii) COVID-19 Response (Taxation and other Regulatory Urgent Measures) Act 2020;
- (iii) COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020; and
- (iv) COVID-19 Response (Urgent Management Measures) Legislation Act 2020.

2. Are there any temporary relief measures against winding up offered to companies in debt?

The new legislation amends parts of the Companies Act 1993 and other related legislation to help businesses facing insolvency due to COVID-19 to continue trading, and keep New Zealanders in their jobs. The legislative changes were also designed to provide relief for companies and other entities facing difficulty complying with their statutory obligations, constitutions or rules due to COVID-19.

The wage subsidy scheme was promptly introduced to provide lump sum payments to employers, enabling them to be able to pay employees (or themselves, if self-employed) if they were struggling to otherwise meet those costs.

A new 'Business Debt Hibernation' scheme affords disrupted businesses with one month of protection while they seek arrangements with creditors. During that timeframe, most creditors are precluded from taking legal action to enforce debts, including applying for the business to be liquidated. A further six months of protection is available under the scheme in instances where creditors agree to that extension.

A temporary loss carry-back scheme was also introduced by the IRD. The scheme allows businesses expecting to make a loss in either the 2020 year or the 2021 year to use that loss to offset profits they made the year before.

3. Are there any temporary relief measures against bankruptcy extended to individuals?

Several legislative amendments have been introduced to protect individuals from the potentially devastating financial impact of COVID-19. The wage subsidy scheme is likely to be the most prominent of these.

Another example are the changes made to the Property Law Act 2007, which extend various timeframes under that Act to accommodate the likely increase in mortgage and rental defaults resulting from COVID-19, in turn providing mortgagors and tenants with more time to remedy those defaults.

4. Are there any other changes to bankruptcy and insolvency laws in your jurisdiction due to the Covid-19 pandemic?

Yes. Additional changes to bankruptcy and insolvency laws in response to COVID-19 have included:

- (i) Bringing forward an insolvency-related reform under the voidable transactions regime to reduce the period of vulnerability from 2 years to 6 months, where the debtor company and the creditor are unrelated parties.
- (ii) Amendments to sections 135 and 136 of the Companies Act 1993 introduced a 'safe harbour' for company directors facing significant liquidity problems as a result of COVID-19 (however, this temporary provision expired on 30 September 2020).
- (iii) Deferring the enactment of the Insolvency Practitioners Regulation Act 2019 and the Insolvency Practitioners Regulation (Amendments) Act 2019. These Acts were originally scheduled to come into force on 17 June 2020, however Cabinet agreed to allow the commencement to be deferred and they later came into force on 1 September 2020.

5. Restructuring outside insolvency - Are there measures put in place in your jurisdiction to encourage the restructuring of companies?

Financial relief measures have been implemented to assist businesses of all sizes facing cash flow issues.

The small business cash flow loan scheme operated between 12 May and 12 June, providing one-off government loans for businesses and organisations (including sole traders and the self-employed).

A business finance guarantee scheme for small and medium-sized businesses has been introduced with the aim of protecting jobs and supporting the economy. The Crown, in partnership with participating approved banks, will support targeted new loans (including increases to existing limits) to eligible businesses.

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1. What are the laws or regulations introduced in your jurisdiction to curtail the impact of Covid-19 pandemic on companies and individuals?

The Covid-19 (Temporary Measures Act) 2020 (“CV19A”) was passed on 7 April 2020 to provide for temporary measures in response to the Covid-19 pandemic. The CV19A provided, amongst others, temporary relief for inability of parties in performing certain types of contracts due to Covid-19, temporary relief for financially distressed individuals and businesses and rental relief and related measures.

2. Are there any temporary relief measures against winding up offered to companies in debt?

The CV19A introduced temporary modifications to the Companies Act and the Insolvency, Restructuring and Dissolution Act 2018 to provide general relief in respect of insolvency proceedings against companies. The monetary thresholds and time limits for insolvency proceedings were increased under the CV19A:

- (i) The debt threshold for insolvency was increased from S\$10,000 to S\$100,000.
- (ii) The period for a company to respond to a statutory demand from a creditor was increased from 21 days to 6 months.

However, these modifications only applied during a 6-month period from 20 April 2020 to 19 October 2020. This period was not extended.

3. Are there any temporary relief measures against bankruptcy extended to individuals?

The CV19A also introduced temporary modifications to the Bankruptcy Act and the Insolvency, Restructuring and Dissolution Act 2018 to provide general relief in respect of bankruptcy proceedings against individuals. Similarly, the monetary thresholds and time limits for bankruptcy proceedings were increased under the CV19A:

- (i) The debt threshold for bankruptcy was increased from S\$15,000 to S\$60,000.
- (ii) The period for an individual debtor to respond to a statutory demand from a creditor was increased from 21 days to 6 months.

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- (iii) The debt threshold for the applicability of the Debt Repayment Scheme, which is a pre-bankruptcy scheme administered by the Official Assignee where a debtor commits the a debt repayment plan to repay his debt over a fixed period of not more than 5 years and will be released from bankruptcy thereafter, to a debtor is increased from S\$100,000 to S\$200,000.

However, these modifications only applied during a 6-month period from 20 April 2020 to 19 October 2020. This period was not extended.

4. Are there any other changes to bankruptcy and insolvency laws in your jurisdiction due to the Covid-19 pandemic?

The CV19A provides temporary relief to parties who are unable to fulfil their contractual obligations under certain types of contracts. Under the CV19A, if the contract was entered into or renewed before 25 March 2020 (or automatically renewed on or after 25 March 2020), the contractual obligation must be performed on or after 1 February 2020, and a party's inability to perform the contractual obligation is to a material extent caused by Covid-19, then that party is entitled to serve a notification for relief on the counterparty to the contract.

By serving the notification for relief, the counterparty is precluded from taking certain actions, including bankruptcy and insolvency proceedings (including schemes of arrangement or judicial management applications) against the that party or any guarantor or surety of that party. Such bankruptcy and insolvency proceedings can only be commenced upon the expiry of the relief period applicable to that type of contract or if the notification for relief is withdrawn or assessed to be invalid.

5. Restructuring outside insolvency - Are there measures put in place in your jurisdiction to encourage the restructuring of companies?

Yes. Firstly, the Insolvency, Restructuring and Dissolution (Amendment) Bill was introduced in Parliament on 5 October 2020, which purpose is to establish a Simplified Insolvency Programme. The Simplified Insolvency Programme is intended to assist qualifying micro and small companies (with annual revenue of not more than S\$1 million and S\$10 million respectively) with liabilities of up to S\$2 million that require support to restructure their debts to rehabilitate the business or wind up the company if the business has ceased to be viable. Secondly, banks and financial institutions are also developing a support scheme to facilitate the restructuring of a distressed company's loans across multiple financial institutions, where the Simplified Insolvency Programme is not suitable or where the distressed

company is not eligible for certain financial relief programmes. Details of this support scheme are not available at the time of writing but are expected to be announced in November 2020.

There are also other financial relief measures implemented by the Monetary Authority of Singapore, in order to help small medium businesses and individuals facing cashflow pressures.

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1. What are the laws or regulations introduced in your jurisdiction to curtail the impact of Covid-19 pandemic on companies and individuals?

While no laws or regulations in particular were newly enacted in South Korea to alleviate and mitigate a harsh impact of Covid-19, a number of amendments to certain laws have been made since the outbreak, which include, *inter alia*, the Commercial Building Lease Protection Act and the Financial Institution Inspection and Restriction Rule.

For instance, the amendment to Commercial Building Lease Protection Act allows a tenant to make a request to a landlord for a rent reduction for the reason of changes in economic conditions due to first-degree infectious diseases. In the case of the Financial Institution Inspection and Restriction Rule, the amendment gives a favor to a financial institution giving loans to an enterprise and a small business suffering from a disaster. Although neither of the aforesaid changes explicitly mentions Covid-19, it is implied by the words “first-degree infectious disease” and “disaster”, respectively.

2. Are there any temporary relief measures against winding up offered to companies in debt?

No specific rules and regulation were adopted aiming to provide temporary relief to debtor companies simply because of Covid19; however, the Debtor Rehabilitation and Bankruptcy Act (“DRBA”) provides for a general rehabilitation system for companies before going bankrupt. Furthermore, in the process of rehabilitation, the impact of Covid-19 will be taken into account in favor of companies.

3. Are there any temporary relief measures against bankruptcy extended to individuals?

As the general rehabilitation system and factors under the DRBA discussed above are also applicable to individuals as well, please refer to the response to question 2 above.

4. Are there any other changes to bankruptcy and insolvency laws in your jurisdiction due to the Covid-19 pandemic?

Due to the Covid-19 pandemic, the Enforcement Decree of the Debtor Rehabilitation and Bankruptcy Act has been amended to expand the applicability of the provision to financially distressed businesses. In the case of small business debtors, the debt threshold was

increased from KRW 3 billion to KRW 5 billion for filing for simplified rehabilitation procedure, which is a lot less cumbersome and can be completed in a relatively short period of time compared to an ordinary rehabilitation procedure.

This increase in the debt threshold allows more small business debtors to benefit from such simplified rehabilitation procedure saving them both time and money.

5. Restructuring outside insolvency - Are there measures put in place in your jurisdiction to encourage the restructuring of companies?

Although the Korean Government has not adopted any new restructuring measures, there are two major laws governing restructuring in Korea: the Debtor Rehabilitation and Bankruptcy Act and the Corporate Restructuring Promotion Act.

(i) Debtor Rehabilitation and Bankruptcy Act

A rehabilitation procedure under the DRBA is a type of relief provided for a financially distressed company whose going concern value is greater than its liquidation value.

As this procedure is under the supervision of the court, the court will actively participate in the process. Furthermore, shareholders and creditors (and other interested parties as appropriate) will approve a rehabilitation plan and the company will implement the plan and perform accordingly. Also, a receiver appointed by the court will play the role of a general manager of the company, taking custody and disposing of the assets and running the company.

(ii) Corporate Restructuring Promotion Act

A process provided under the Corporate Restructuring Promotion Act (“CRPA”) differs from rehabilitation and bankruptcy procedures under the DRBA above. Simply put, unlike a court receivership which is under the supervision of the court, it is rather carried out according to a workout plan mutually agreed to between a company and its creditors.

Since this process under the CRPA will be led by the primary creditor banks of the company, they may decide the company’s workout process including measures such as debt restructuring and fresh money injection.

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