



The Corona Pandemic hits Myanmar nearly at the same time as the new Insolvency Law 2020 ("the IL" was enacted on 14 February 2020). We all hope that the damage to the Myanmar economy will be as limited as possible, but it does not hurt to prepare for tough times ahead.

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CHALLENGING TIMES AHEAD? WHAT LENDERS AND OTHER CREDITORS NEED TO KNOW ABOUT MYANMAR'S NEW INSOLVENCY SYSTEM

The Corona Pandemic hits Myanmar nearly at the same time as the new Insolvency Law 2020 ("the IL" was enacted on 14 February 2020). We all hope that the damage to the Myanmar economy will be as limited as possible, but it does not hurt to prepare for tough times ahead. So, in this note you will find a few thoughts about the new legal framework for insolvency in Myanmar, mostly from a practical and commercial perspective rather than seen as formal and legal procedures.

What is really new in terms of the laws on the subject of insolvency?

Quite a bit. Myanmar never really had a framework for rehabilitation, that is, trying to save the company or at least part of it on a going concern basis rather than just selling off all the assets. This is thus entirely new. There is also a completely new chapter for all winding up (even winding up which is solvent). The also fairly recent Companies Law 2017 ("the CL") already had that, but the IL's chapter on winding up basically replaces that in its entirety. There are also new provisions on priorities (which creditor gets paid first), preferences (clawing back money or benefits paid to some creditors not to others) and cross border bankruptcies. Also, not discussed here are chapters on personal bankruptcy and insolvency of very small businesses.

Highlights of this note

- ▶ What is really new in terms of the laws on the subject of insolvency?
- ▶ How does a company rescue work? Is it good for the creditors or good for the debtor?
- ▶ Can an unsecured lender, bank or other creditor get its money back first despite all these procedures?
- ▶ How about secured lenders, banks or other creditors?
- ▶ Can the creditors choose their own Rehabilitation Manager, Plan Supervisor or Liquidator?
- ▶ Are secured creditors always paid back first?
- ▶ Can creditors force a company to go into rescue proceedings?
- ▶ More protection from court proceedings
- ▶ Tight deadlines

How does a company rescue work? Is it good for the creditors or good for the debtor?

Ideally, a rescue is good for all the company's stakeholder. Some companies in dire straits could be rescued if the debts or (part of) the business is restructured, or with new management. To get that done, the idea is to create some breathing space for a company without law suits or enforcement proceedings on assets. It should work out well for everyone if at the end of the rehabilitation, the company has more value for its creditors than would have been the case without all that trouble. But, some companies are actually doomed anyway and then the rehabilitation is for creditors just another obstacle to getting their money back.

A company can start its own rescue by appointing a Rehabilitation Manager ("RM"), who must be a registered insolvency practitioner (so, not just anyone), but a majority creditor can also get this process started. So, there are ways to start the "Rescue Stage" without court intervention, but an application to the Court is also possible. The way it works is that within 3 months one or more creditors work out a "Rehabilitation Plan" with the RM and all creditors get to vote. If it is adopted by a simple majority of creditors (both in terms of value of claims and in terms of number of creditors. Note: this is a big change from previously 3/4th majority!), it binds everyone, even those creditors who did not participate or voted against it. That starts the "Plan Stage", where another registered insolvency practitioner -the so-called Plan Supervisor- will supervise the plan and maybe help with variations of the plan. Only once the plan has been



Photo: EPA

completed or if it cannot be proceeded anymore, we will start winding up the company by a Liquidator, also now required to be a registered insolvency practitioner.

Can an unsecured lender, bank or other creditor get its money back first despite all these procedures?

Unsecured creditors will have to wait during the Rescue Stage. No court actions or enforcement procedures will be allowed, except if the Court agrees with them. Once there is an agreed Plan, all creditors will have to stick to what that plan says. Even when there is no agreement on a plan, because a majority cannot be found, which means we move straight from Rescue to Winding Up, unsecured creditors cannot themselves enforce. They have to wait for the liquidator to make distributions for classes of creditors to get their money back.

How about secured lenders, banks or other creditors?

Even secured creditors must hold their horses during the Rescue Stage. Except if with special permission by the Court, they cannot realize their secured assets.

Once there is a Plan, the fate of the secured creditors will to some degree depend on what the Plan sets out. If the secured creditor has voted in favour of the Plan, they will have to live with whatever that plan says. The Plan acts as a compromise, so the creditor may have abrogated his rights to enforce on the secured assets. If the secured creditor has not participated in the Plan, did not vote for it, then the Company can still prevent the secured creditor from enforcing on the assets, but only with approval of the Court.

A company that goes directly to winding up cannot prevent its secured creditors from realizing their security, though, except if the Court blocks the enforcement proceedings which is allowed in certain circumstances.

Can the creditors choose their own Rehabilitation Manager, Plan Supervisor or Liquidator?

To a limited extent. All Rehabilitation Managers, Plan Supervisors, Receivers and Liquidators must be registered Insolvency Practitioners. Right now that is a very short list mostly in practice controlled by the Myanmar Institute of Certified Public Accountants.



Photo: Nyein Chan Naing/EPA

However, within that list the creditors can appoint or replace many of these positions with another registered insolvency practitioner. For example, if the Company has appointed a Rehabilitation Manager which the creditors do not like, the creditors can hold a meeting and replace him by simple majority.

The creditors are also powerful in a winding up. First of all, when creditors apply to the Court to have a company wound up, they can propose a liquidator, again this must be a registered insolvency practitioner, and the Court will as a principle have to follow that selection. If they did not propose anyone, the Court would have to choose a registered insolvency practitioner as a liquidator. By majority, the creditors can however have this liquidator replaced with another registered insolvency practitioner.

Are secured creditors always paid back first?

This is the main principle, but there are exceptions:

- Like in most countries, there is a list of “**statutory priorities**” in Myanmar, which has been changed by the IL. Taxes used to be the first debts that are paid in a winding up, but that is no longer the case. Now the fees and costs of the registered insolvency practitioners is highest in the order, followed by various claims by employees.
- Generally, past the Rescue Stage, the secured creditors are allowed to enforce on their secured assets, but the Court may decide differently.
- If the secured creditor agreed with a Rehabilitation Plan, his debt will be paid only in accordance with that Plan.

- There generally is discretion by the Court to decide that the assets should not be realized by the secured creditor, subject to conditions.
- The unpaid remainder of a debt to a secured creditor after he has realized the secured asset, will fall into the class of unsecured claimants entitled to pari passu repayment. It is not paid by priority. In other words, when a secured creditor has already enforced on the secured asset and received proceeds, but these proceeds are not sufficient for the debt, the remaining debt will be treated as a normal claim without priority.

Can creditors force a company to go into rescue proceedings?

Normally, creditors can only force a company to go into a Rescue proceeding by obtaining a Court order. Alternatively, a Rescue can be triggered without a Court proceeding but only by a secured creditor who holds security over all or majority of property and whose security agreement provides in appointing a receiver.

More protection from court proceedings

Previously only winding up by the Court triggers protection from court actions for the company. That is now extended to all winding up proceedings, also those not by the Court, but secured creditors may still realize on secured assets, except if Court decides otherwise.

Tight deadlines

Lenders and other creditors now need to comply with rules on how to prove their claims, including short periods to do so. The time period granted by the liquidator to allow the submission of claims might be as short as 14 days.

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