

# Vietnam

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Joelle Dumas, Director  
Katherine Pike, Lawyer  
**PricewaterhouseCoopers**

**P**rior to October 2004, the legal framework for bankruptcy in Vietnam consisted of the Law on Business Bankruptcy dated December 30 1993, the Decree on Business Bankruptcy dated December 23 1994 and various subordinate legal instruments (collectively referred to as the 'old Bankruptcy Law'). The old Bankruptcy Law was generally considered to be deficient and, by the end of the East Asian economic crisis in 2002, the courts had received only 151 petitions, with a mere 46 of these resulting in a declaration of bankruptcy.

The old Bankruptcy Law was replaced by the Bankruptcy Law dated June 15 2004, which came into effect on October 15 2004, and the Resolution of the Judges' Council of the Supreme People's Court guiding the implementation of the Bankruptcy Law dated April 28 2005 (collectively referred to as the 'Bankruptcy Law').

The Bankruptcy Law applies to enterprises and cooperatives established in accordance with Vietnamese law. The list of enterprises covered is extensive and includes state-owned enterprises (SOEs), enterprises belonging to social and political organisations, limited liability companies, joint stock companies, partnerships, private enterprises and foreign-invested enterprises (FIEs). The Bankruptcy Law does not apply to individuals or certain small business entities such as registered family and household businesses.

The Bankruptcy Law stipulates that additional regulations will be issued to address the insolvency of enterprises in certain specific sectors, including:

- national defence and security;
- finance, banking and insurance; and
- other sectors directly providing public utility products and services.

To date, however, such detailed laws have not been issued.

Voluntary liquidation and restructuring are addressed by separate legal frameworks depending on the type of enterprise. An enterprise in financial difficulties may consider restructuring or terminating its operations in accordance with the relevant legislation. Chapter VII of the Law on Enterprises, which governs limited liability companies, joint stock companies, partnerships and private enterprises, deals with the dissolution and reorganisation of enterprises and allows for the division, separation, consolidation, merger and conversion of enterprises. The Law on Foreign Investment governs the dissolution, division, demerger, consolidation and conversion of FIEs.

Both the Law on Enterprises and the Law on Foreign Investment will be replaced by a unified Law on Enterprises which was passed on November 29 2005 and will become effective on July 1 2006, and which contains similar provisions.

Chapter VII of the Law on State-Owned Enterprises deals with the reorganisation and dissolution of SOEs. Chapter VIII addresses conversion of SOEs, including equitisation (ie, the process of conversion into a joint stock company).

## 1. Legal framework and the effectiveness of court processes/legal remedies

### 1.1 Describe the nature and effectiveness of the following:

#### (a) Debt recovery remedies where the creditor has no security

While the old Bankruptcy Law required a debt to remain outstanding for at least 30 days before the creditor had the right to file a bankruptcy petition, the Bankruptcy Law requires only that the following conditions are met:

- The unsecured/partially secured debt has matured; and
- A request for payment of the debt has been made and the debtor has failed to repay the debt.

The debtor is considered insolvent when these conditions are met. The unsecured/partially secured creditor must submit documentation evidencing that these conditions have been satisfied when filing a petition.

While the Bankruptcy Law has made it simpler for unsecured creditors to file a petition with the court, the Vietnamese court system in general is plagued by a lack of due process and adequately trained judges. A lack of awareness and understanding of the bankruptcy system further leads many unsecured creditors to have recourse to other means of enforcement, such as approaching the economic police directly to assist with recovery, bypassing the court system altogether. Where an unsecured creditor commences an action in the court, it is unlikely that the originating process would refer to the Bankruptcy Law; instead, the Civil Code or the Commercial Law would be cited.

#### (b) The enforcement of security

Fully secured creditors do not have the right to file a petition under the Bankruptcy Law. The enforcement of security is generally carried out separately from bankruptcy proceedings, with the effectiveness of enforcement largely dependent on the terms of the instrument that created the security and the extent to which secured creditors can avail themselves of the authority of the court and other state instrumentalities.

A secured transaction must satisfy certain requirements in order to be considered valid and

therefore enforceable under Vietnamese law. The instrument creating the security must be in writing and adequately identify and ascribe a value to the secured property. The method for realisation of the secured property must also be described.

The secured property must satisfy the following conditions:

- It must be under the lawful ownership of the securing party (this condition poses problems in relation to land, where ownership is often difficult to prove as a result of poor state administration);
- It must be permissible to enter into transactions involving the property and the property must not be the subject of a dispute; and
- The securing party must have purchased insurance for the secured property, where the law requires it to be insured.

The following secured transactions must be registered:

- where the law requires the ownership of the property to be registered (however, it is not always clear in what circumstances the ownership of property must be registered or with which government authority such registration must be made);
- where the parties agree that the securing party or a third party will retain possession of the property; and
- where a single item of property is used as security for the fulfilment of several obligations.

All subsequent dealings with the secured property must also be registered. Where a secured transaction is required to be registered, registration is a precondition to the validity and enforceability of the secured transaction.

The system for registration of secured transactions has improved significantly over the past few years with the establishment of the National Registration Agency for Secured Transactions. The agency has offices in Hanoi, Ho Chi Minh City and Danang, and deals primarily with pledges over movable property. The agency has already accepted a relatively large number of secured transactions for registration; however, the enforceability of these transactions is compromised by the fact that very few of these transactions have been tested before the courts and a lack of clarity on certain issues in the law, for example the poor definition of fixtures.

Registration of mortgages over land and

immovable property is handled by a different agency administered by the Department of Natural Resources and the Environment. The mortgage registration process is significantly hampered by underlying problems with Vietnam's land and immovable property registration system.

A court order is not required to enforce a secured transaction, except where bankruptcy proceedings are underway, in which case a court order is required prior to enforcement.

**(c) Corporate bankruptcy/liquidation processes**

The Bankruptcy Law requires the owner/legal representative (usually the general director or chairman of the board of management or equivalent body) of an enterprise to file a petition upon becoming aware that the enterprise is insolvent. The requirement under the old Bankruptcy Law to initiate measures to restore the debtor's ability to meet debts before the obligation to file a petition arises has been removed.

Secured creditors are not permitted to vote at creditors' meetings. However, they have notice rights in relation to proceedings initiated by others and the law does not explicitly bar them from participation in meetings.

**(d) Formal corporate rescue processes**

At the first creditors' meeting, the creditors will decide whether to restructure the business. The debtor must then finalise and submit to the court a rescue plan within 30 days of the date on which the resolution of the creditors' meeting is passed. A creditor can also propose a rescue plan to the court.

The rescue plan must identify measures for restoring business operations as well as a timetable and plan for debt repayment. The Bankruptcy Law provides a list of available measures, including:

- raising new capital;
- changing lines of production and business;
- renewing production technology;
- management restructuring;
- merging, dividing or separating internal departments aimed at raising productivity and quality;
- selling shares to creditors;
- selling or leasing redundant property; and
- other measures which are not contrary to law.

The rescue plan must be approved by the court prior to its submission to the creditors' meeting.

The plan is approved by a quorum of at least half the number of unsecured creditors representing at least two-thirds of unsecured debt.

The Bankruptcy Law stipulates a three-year time limit within which to achieve the objectives of the rescue plan. During implementation, the debtor must submit semi-annual reports to the court and creditors are obliged to play a supervisory role.

The rescue plan may be amended at any time by agreement between the parties, subject to the approval of the judge. Amendments must be approved by the abovementioned quorum.

Where the rescue plan is successful, the debtor must satisfy its pre-bankruptcy obligations. Where the plan fails, the judge may issue a decision to commence liquidation of assets.

**(e) Informal corporate rescue processes**

The Bankruptcy Law no longer requires the debtor and creditor to undergo a voluntary conciliation process prior to the commencement of bankruptcy proceedings.

**1.2 What are the formal processes to effect a liquidation of the company's assets?**

In the context of bankruptcy proceedings, where the enterprise has enjoyed special assistance from the state but has failed to make a recovery and satisfy creditors, the judge will not convene the creditors' meeting, effectively bypassing the formal rescue process and proceeding directly to the liquidation of assets.

The judge will also decide to commence liquidation of assets where the creditors' meeting is unsuccessful due to the following:

- The owner/legal representative of the debtor fails to attend the creditors' meeting without a legitimate excuse or the meeting has already been adjourned once, where the petitioners are either unpaid employees or unsecured/partially secured creditors; or
- The creditors' meeting fails to achieve quorum after having already been adjourned once, where the petitioner is the owner/legal representative of the debtor.

Quorum is achieved if more than half the number of unsecured creditors representing at least two-thirds of the value of unsecured claims are present and, where the petition was filed by the owner/legal representative, the owner/legal

representative (or his proxy) attends the creditors' meeting. A creditors' meeting may be adjourned once where:

- it fails to achieve quorum;
- the owner/legal representative of the debtor fails to attend for a legitimate reason; or
- more than half the number of unsecured creditors present at the meeting vote in favour of adjournment.

Liquidation of assets may also commence in the following circumstances:

- The debtor fails to prepare a formal rescue plan within 30 days of the date on which the initial creditors' meeting resolves to recover the business;
- The creditors' meeting rejects the formal rescue plan; or
- The debtor fails to implement or implements improperly the formal rescue plan, unless otherwise agreed by the parties.

The Bankruptcy Law permits concerned parties to appeal the judge's decision to commence liquidation of assets.

The decision to commence liquidation of assets must contain a plan for the distribution of assets in accordance with the prescribed order of priority. The Bankruptcy Law does not address in any detail the processes to effect the sale and distribution of assets.

Private enterprises may voluntarily wind up in accordance with the terms of their charter and the relevant governing legislation, upon approval by the relevant licensing or supervisory authority. Once permission is granted, the enterprise must terminate its operations, close its accounting books, terminate employees and conduct the liquidation of its assets.

During winding-up, the enterprise is not permitted to:

- disperse of its assets (other than in accordance with the liquidation);
- pay undue debts;
- waive rights to collect debts;
- convert unsecured debts into secured debts; or
- enter into new economic contracts.

An announcement of the liquidation must be published in a newspaper and a liquidation committee be established, the composition of which is determined by the enterprise. Where the liquidation committee is not established, the relevant authority will take over the liquidation process.

The liquidation committee then conducts the valuation of assets, notifies creditors and formulates and executes a liquidation plan. Once the final liquidation file is submitted to the relevant authority, it will issue the decision on dissolution. Following the liquidation, any remaining assets will be returned to the shareholders or investors.

Where it becomes apparent during the liquidation that the enterprise is insolvent, a bankruptcy petition must be filed with the court.

### **1.3 What is the effect on debt collection and the enforcement of security of:**

#### **(a) An adjudication of corporate bankruptcy/liquidation?**

From the date on which a debtor receives notification of the court's decision to commence bankruptcy proceedings, the debtor is prohibited from carrying out the following acts:

- concealing or disposing of any assets;
- paying unsecured debts;
- abandoning or reducing its right to claim a debt; or
- converting unsecured debts to debts secured by its assets.

Additionally, the following activities require the prior written approval of the judge:

- pledging, mortgaging, assigning, selling, donating or leasing any asset;
- receiving assets under an assignment contract;
- terminating the performance of an effective contract;
- borrowing a loan;
- selling or converting shares;
- transferring the ownership right of any asset;
- paying new debts arising from the business activities of the debtor; or
- paying the wages of the debtor's employees.

Where the judge issues a decision to commence liquidation of assets, all undue debts are accelerated and considered to be due and payable.

While the old Bankruptcy Law restricted the discharge of secured debts from the date on which the judge issued the decision to commence bankruptcy proceedings, the Bankruptcy Law freezes the enforcement of a secured transaction from the date on which the court accepts the petition. Accordingly, the 30-day window to enforce security previously provided under the old Bankruptcy Law no longer exists.

The Bankruptcy Law permits the enforcement of secured debts during bankruptcy proceedings only where the following conditions are met:

- The debt to be enforced is mature;
- Enforcement does not materially affect the production and business activities of the debtor; and
- The secured creditor provides, in writing, a legitimate reason for enforcing the debt.

When the judge issues the decision to commence liquidation of assets, priority is granted to secured creditors, provided that such security was created prior to the date on which the court accepted the petition. These secured creditors will receive only partial satisfaction of their debt if the value of the property is not sufficient to cover their debt. Where the value of the property is greater than their debt, any excess is returned to the pool of assets for distribution to other creditors.

**(b) The commencement of a formal corporate rescue process?**

Please refer to section 1.3(a).

**(c) The initiation of an informal corporate rescue process?**

The instrument that creates a security usually addresses the enforcement of the security during an informal corporate rescue process.

Both the Law on Enterprises and the Law on Foreign Investment provide general protection for unsecured creditors by requiring newly formed enterprises to take on the rights and obligations of their predecessor enterprises.

**(d) The initiation of an insolvency or insolvency-related process under any special legislation?**

No special legislation has been enacted. The Bankruptcy Law is the only applicable legislation.

**1.4 Are insolvency procedures involving a corporation incorporated in your jurisdiction recognised if they are started in another jurisdiction?**

No.

**1.5 In what circumstances would the directors or officers of a company in financial difficulties face potential personal liability for continuing to trade? In practice, are any such provisions actually enforced?**

The Bankruptcy Law holds owners/legal representatives liable where they fail to submit a petition within three months of becoming aware that the debtor is insolvent. However, the penalties for failure to file a petition are not specified.

The Bankruptcy Law provides that the debtor's business activities continue as usual during bankruptcy proceedings, under the supervision of the presiding judge and the asset management and liquidation committee. At the request of the creditors' meeting, the judge may replace the enterprise's management with an administrator.

Breaches committed during bankruptcy proceedings may result in administrative or criminal liability on directors or officers. However, details of the penalties that may apply are not provided in the Bankruptcy Law.

The owners, directors and officers of an enterprise that is declared bankrupt cannot incorporate an enterprise or hold a management position in an enterprise for a period of between one and three years from the date of the declaration, unless the bankruptcy was due to *force majeure*.

**2. What are the advantages and disadvantages of triggering a formal procedure?**

The main advantages of triggering a formal procedure are as follows:

- Unsecured creditors may apply for the protection of assets by requesting the judge to invalidate antecedent transactions.
- From the date on which the debtor receives notice of the decision to commence proceedings, potentially abusive transactions are prohibited.
- During proceedings, the debtor's business is monitored by the asset management and liquidation committee, and certain transactions require the approval of the judge.
- During proceedings and restructuring, the debtor is sheltered from civil claims and court resolutions over its assets.
- The debtor, the creditors and the asset management and liquidation committee may request suspension of performance of a

contract where this is deemed to benefit the debtor.

- During proceedings, the asset management and liquidation committee may propose emergency measures for the preservation of the debtor's assets.
- The creditors' meeting may ask the judge to replace the owner/legal representative with a court-appointed administrator.

The main disadvantages of triggering a formal procedure are as follows:

- The Bankruptcy Law does not address the required independence, professional qualifications or experience of the enforcement officer or the court officer assigned to the asset management and liquidation committee.
- There is a dearth of adequately trained bankruptcy judges.
- The Vietnamese judicial system may be biased in favour of SOEs with regard to foreign creditors.
- Problems exist in relation to enforcement, particularly with regard to the integrity of the system for the valuation and auction of assets.

### **3. What are the practical options for out-of-court restructuring?**

SOEs can be restructured in accordance with the provisions of the Law on State-Owned Enterprises and Decree 187 and Circular 126 in relation to equitisation. The Law on State-Owned Enterprises permits SOEs to be restructured by merger, consolidation, division or separation. SOEs can also be converted into limited liability companies or joint stock companies.

For most private enterprises, out-of-court restructuring is governed by the Law on Foreign Investment and the Law on Enterprises, which allow for the division, demerger, merger, consolidation or conversion of an enterprise. In each case, the approval of the licensing authority must be obtained. However, once the owner or legal representative becomes aware that an enterprise is in a state of insolvency, the obligation to file a petition under the Bankruptcy Law is triggered.

## **4. What is the effect on the management of a company of:**

### **4.1 An adjudication of corporate bankruptcy/liquidation?**

Following the acceptance of a petition and the formal commencement of bankruptcy proceedings, the business activities of the debtor continue as usual under the supervision of the asset management and liquidation committee and the presiding judge.

Where management is considered to lack the capacity to continue to operate the business or preserve the debtor's assets, the creditors' meeting may request the judge to appoint an administrator to represent the debtor.

### **4.2 The commencement of a formal corporate rescue process?**

The Bankruptcy Law requires the active participation of management in the preparation and implementation of any formal rescue plan.

Management is required to liaise with creditors on the implementation of the rescue plan and report on the implementation of the rescue plan to the court on a semi-annual basis.

### **4.3 The initiation of an informal corporate rescue process?**

The effect on management will depend largely on the nature of the rescue.

### **4.4 The initiation of an insolvency or insolvency-related process under any special legislation?**

No special legislation has been enacted. The Bankruptcy Law is the only applicable legislation.

## **5. Roles of key players involved in the restructuring and insolvency process**

### **5.1 Who is responsible for the 'case management control and administration of a corporate bankruptcy/liquidation, a formal rescue or an informal rescue?'**

The presiding judge and the asset management and liquidation committee are responsible for the control and administration of bankruptcy proceedings and the liquidation process. Certain decisions made by the committee require the

approval of the judge prior to implementation.

The asset management and liquidation committee consists of an enforcement officer from the judgment enforcement office, a court officer, a representative of the creditors, a representative of the debtor and, where the judge deems necessary, an employee representative and an expert.

The committee is dissolved where a formal rescue plan is approved. Management is responsible for the implementation of the plan under the supervision of the creditors' meeting and the presiding judge.

With respect to informal rescues, control and administration are handled by management and the relevant licensing or supervisory authority.

### **5.2 Who is responsible for the 'case management' control and administration of a case of corporate insolvency under any special legislation?**

No special legislation has been enacted. The Bankruptcy Law is the only applicable legislation.

### **5.3 Who is responsible for preparing the restructuring plan in a formal or informal rescue?**

The owner/legal representative takes primary responsibility for developing the formal rescue plan. However, the creditors' meeting and the judge exercise considerable influence on the final content of the formal rescue plan.

The party responsible for preparing an informal rescue plan depends on the nature of the informal rescue process.

### **5.4 Who is responsible for preparing the restructuring plan in a case of corporate insolvency under any special legislation?**

No special legislation has been enacted. The Bankruptcy Law is the only applicable legislation.

### **6. What financial information is available to creditors in a corporate bankruptcy/liquidation, a formal rescue and an informal rescue?**

Financial disclosure to creditors is required during the initial creditors' meeting in the form of a report on the business operations and financial position of the debtor. However, the law is silent with respect to the precise nature and extent of such financial disclosure.

Where a formal rescue plan is approved, creditors are required to supervise its implementation and the debtor is required to report to the court on a semi-annual basis.

In an informal rescue of an enterprise governed by the Law on Enterprises, no financial information is required to be provided to creditors. An enterprise governed by the Law on Enterprises undergoing restructuring is required only to give notice to creditors. Creditors do not have any specific rights of redress in the informal rescue process.

## **7. Financial issues**

### **7.1 What are the main areas from which funding is generally utilised by companies undertaking either formal or informal restructuring?**

The following types of companies have different levels of access to funding:

- SOEs;
- enterprises under the Law on Enterprises; and
- FIEs.

For SOEs, the main source of funding comes from the state budget and state-owned commercial banks, which is why very few SOEs have declared bankruptcy or sought voluntary restructuring.

For enterprises governed by the Law on Enterprises and FIEs undergoing restructuring, access to financing is available from the following sources:

- current shareholders;
- third-party investors interested in a long-term stake; and
- creditor refinancing – where creditors either write off debt or convert to equity to release cash flow.

In practice, funding for restructurings from formal onshore channels, such as financial institutions, is not readily available. Few financial institutions will lend money to companies in the process of recovery due to their bad credit rating. Therefore, companies facing financial difficulties must search for potential acquirers or investors to secure the financing required. The financial situation and performance of companies undergoing restructuring are often such that only lenders or investors willing to accept higher levels of risk would wish to become involved.

Where capital from new investors has been introduced, it has often involved near or total

dilution of existing shareholder interests or, at a minimum, substantial reductions in control by the existing group of shareholders.

For FIEs, creditor refinancing or the sourcing of funding is normally secured offshore.

The purchasing of debt by venture capitalists and banks that specialise in distressed debt sectors has not yet materialised in Vietnam. However, with continued reforms in the finance and banking sector, as well as the stock market listings of blue-chip SOEs, this could become an option in the near future.

Regulations for asset management company structures are now in place and each of the four state-owned commercial banks has established such entities, but new legislation will have to be passed before asset management companies can fully function as they were originally intended.

Specific rules are applicable to enterprises directly related to national defence and security and important public services. Where such enterprises are unable to pay their debts, the head of that body must report to the prime minister, who will decide whether to provide assistance to the enterprise concerned. Such enterprises are mainly SOEs. It is noteworthy, however, that financial, monetary and insurance enterprises are included in the list of enterprises directly related to important public services. The prime minister's consent must be given before bankruptcy proceedings against such enterprises may be commenced.

### **7.2 In what order are creditors paid in a corporate bankruptcy/liquidation?**

The Bankruptcy Law requires assets to be distributed in the following order of priority:

- secured creditors (to the extent of the value of the property used as security);
- loans from the state (the Bankruptcy Law does not cover all liabilities to the state, but refers more specifically to assistance granted by the state to restore an enterprise's business operations);
- the costs of the bankruptcy proceedings;
- outstanding liabilities to employees; and
- unsecured creditors in proportion to the amount of the debt.

Any surplus is returned to the owners, shareholders, members or investors, as the case may be.

In the case of a voluntary winding-up, an FIE will discharge its obligations in the following order of priority:

- expenses relating to liquidation;
- entitlements owed to employees;
- tax liabilities and other financial obligations to the state;
- liabilities to creditors; and
- other liabilities.

Any amount remaining may be remitted to the investors.

The Law on Enterprises and the Law on State-Owned Enterprises do not specify the order of priority for payment of liabilities in the event of dissolution.

### **7.3 Are there any legal provisions that might operate to invalidate the creation of security, the disposal of an asset or the payment of a creditor by a company in financial difficulties?**

From the date on which the debtor receives the court's decision to commence bankruptcy proceedings, it is prohibited from converting unsecured debts into secured debts, paying unsecured debts and disposing of assets. However, such activities are possible with the prior written consent of the judge.

Certain transactions that occur in the three months prior to the court commencing bankruptcy proceedings can be declared invalid by the court. Such antecedent transactions include the mortgage or pledge of assets in respect of debts. The asset management and liquidation committee and any unsecured creditors have the right to request the court to invalidate the transaction.

### **7.4 What is the position of both unsecured and secured creditors that vote against, do not agree with or do not consent to either a formal or an informal rescue plan?**

In the context of bankruptcy proceedings, creditors named on the list of creditors have the right to participate in the creditors' meeting. A formal rescue plan is approved by more than half the number of unsecured creditors present at the creditors' meeting representing at least two-thirds of the value of unsecured claims.

Once the resolution passed is formally recognised by the judge, the resolution becomes binding and there are no other avenues identified in the Bankruptcy Law for unsecured or secured

creditors that vote against, do not agree with or do not consent to the rescue plan.

In the case of a division, separation, consolidation, merger or conversion of an enterprise under the Law on Enterprises, creditors must be notified. However, creditors have no right of redress where it is intended that the enterprise be restructured. There is no requirement to notify creditors when restructuring an FIE.

**7.5 What actions can creditors take if they are not satisfied with the conduct of either a formal rescue procedure or a corporate bankruptcy/liquidation?**

Where the court rejects the filing of a petition, the petitioner can appeal to the chief justice within 10 days of receipt of the decision. Where the court decides not to commence bankruptcy proceedings, the petitioner has the right to appeal to the chief justice within seven days of receipt of the notice from the court.

Creditors can also appeal against a judge's decision to commence liquidation of assets and against a declaration of bankruptcy. These appeals are heard by a panel of three judges selected by the chief justice of the immediate superior court.

With regard to a formal rescue, the rights of creditors are fairly limited. While creditors are obliged to supervise the implementation of an agreed rescue plan, they do not have the right unilaterally to amend or suspend the rescue plan.

**8. General**

**8.1 Can the insolvency regime be described as systematic and efficient for:**

**(a) The liquidation of businesses incapable of being restructured?**

**(b) The restructuring of debt?**

No.

**8.2 What are the biggest legal and non-legal impediments to the systematic and efficient liquidation of businesses and restructuring of debt?**

The major non-legal impediment is the attitude of both borrowers and lenders in seeking solutions and recourse to non-performing or sub-par assets, especially within the state-owned sector. Historically, one characteristic of the state-owned sector was the directed lending of

state-owned commercial banks to other SOEs. In general, the financial performance of SOEs has lagged behind their private competitors, whether domestically or foreign-owned enterprises, in the economic sectors where non-SOEs have been allowed to participate. The enmeshed nature of the financing arrangements within the state-owned sector reduces the independent incentives for both lenders and borrowers to seek liquidation of businesses and restructuring of debts.

**8.3 Has the insolvency regime has been reformed in the last two years? If so:**

**(a) What are the reforms?**

**(b) Are the reforms being implemented so as to facilitate the systematic and efficient handling of corporate insolvency cases?**

In October 2004 the Bankruptcy Law replaced the existing deficient bankruptcy legislation.

Some of the notable changes introduced by the Bankruptcy Law include:

- simplification of the definition of 'bankruptcy';
- introduction of liability on parties that lodge frivolous petitions which cause damage to an enterprise;
- deletion of the requirement for voluntary conciliation between a creditor and debtor prior to the filing of a petition;
- reduction of the threshold for employee-initiated petitions; and
- additional measures for the protection of assets of an insolvent enterprise prior to and during bankruptcy proceedings.

Although the Bankruptcy Law succeeds in addressing some of the major deficiencies of the previous regime, it remains to be seen whether creditors in Vietnam will embrace bankruptcy procedures as a means of debt recovery. The Supreme Court has recently started to publish some of its judgments, which should provide some limited insight into the application and interpretation of the Bankruptcy Law.

**8.4 Are there any other legal or non-legal changes in the last two years that have impacted on the operation of the insolvency law regime?**

The Debt and Asset Trading Company was set up under the Ministry of Finance in 2004. Its objective was principally to acquire the non-performing

loans of state-owned commercial banks and non-performing assets (primarily of non-performing SOEs, whether in whole or in part) to restructure for sale. This development stems in part from pressures to reform the state-owned sector and the banking sector to enhance their ability to support the country's economic growth, and in anticipation of increased competitive pressures for market reforms and increased foreign competition as a result of commitments towards multilateral trade agreements.

A number of proposed legislative changes aim to improve corporate governance standards for companies in Vietnam. This may ultimately lead to greater accountability for management, which in turn could impact on the operation of the corporate insolvency system.

**8.5 Is statistical information on insolvency cases and corporate insolvency published?  
If so, how? Is it easily and freely accessible?**

No.

**8.6 What is the most urgent reform required to facilitate the systematic and efficient handling of corporate insolvency cases (formal and informal)?**

The most effective reform to improve the effectiveness of the corporate insolvency system would be the education and increased awareness of both creditors and debtors of their rights under the Bankruptcy Law. This increased awareness should occur in concert with the overall improvement of the court system in Vietnam and the training of judges who hear bankruptcy cases.