A&O SHEARMAN

Restructuring across borders
Cambodia

CORPORATE RESTRUCTURING AND INSOLVENCY PROCEDURES | APRIL 2025

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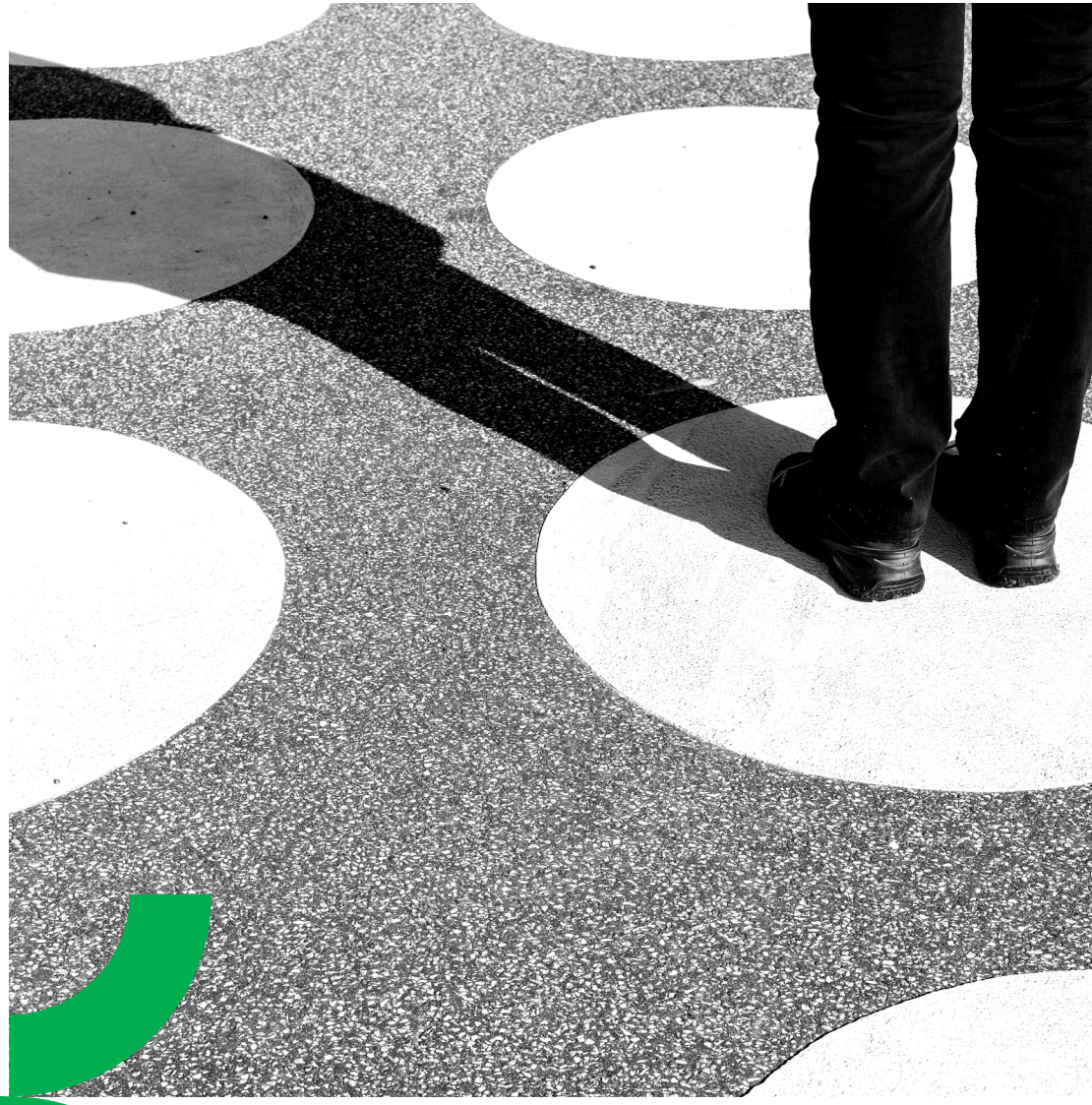
Introduction

Cambodia's Law on Insolvency 2007 (the **Insolvency Law**) remains almost completely untested. This fact sheet is based on the black letter of the law. However, in reality, the procedures and the judicial actions are likely to be unpredictable for at least the next few years.

When a corporate borrower in the Kingdom of Cambodia faces financial difficulty, the Insolvency Law provides two principal restructuring and insolvency procedures:

- Liquidation; and
- Plans of compromise.

The choice of procedure will depend on a number of different factors. If there are reasonable prospects for rehabilitating the debtor's business, a plan of compromise may provide creditors with the best return on their investment. In order to take advantage of this procedure, a broad consensus among the majority of the creditors on the plan of compromise is required. Alternatively, if no plan of compromise is submitted or approved, the court will seek to liquidate the debtor's business. Further, and subject to the procedure that is adopted, a secured creditor may also have the ability to enforce its security outside a formal liquidation or rehabilitation process. The enforcement of security is outlined in the Law on Secured Transactions 2007 (the **Secured Transactions Law**).



Liquidation

Insolvency proceedings may be commenced under the Insolvency Law against a debtor who (i) is a legal entity or partnership formed under the laws of the Kingdom of Cambodia; or (ii) is formed internationally but has tangible assets located within the Kingdom of Cambodia and a registered address within the Kingdom of Cambodia.

A petition to open insolvency proceedings in the Kingdom of Cambodia may be made to a court on the grounds that the debtor has failed to comply with its payment obligations as they fall due in an aggregate amount exceeding five million Riels (around USD1,250). The petition may be made by: (i) the debtor; (ii) one or more creditors; (iii) a director; or (iv) the public prosecutor. In any event, the debtor is required to make such a petition within 30 days of its failure to comply with the above payment obligations.

The court will open insolvency proceedings against the debtor if it is satisfied as to the grounds of the petition; however, it may dismiss a winding-up petition for the following reasons:

- the necessary grounds have not been made out;
- in respect of a petition made by the debtor or a person acting in concert with them, the debtor's failure to meet their obligation was done in bad faith; or
- the debtor's assets are likely to be insufficient to cover the costs of the proceedings (unless a related person advances monies to cover such costs).

If the court finds that the winding up petition was filed frivolously or maliciously with the intent to harm either the debtor or other creditors, it may rule that the petitioner(s) are liable for all damages incurred by the other party/parties as a result of the petition.

A ruling opening insolvency proceedings will also set out the deadlines for the filing of proofs of claims and a date for the creditors' meeting as well as appointing, or confirming, the appointment of an administrator over the business and assets of the debtor.

The relevant filing offices and public registries in which security interests are registered must be immediately notified of the court ruling, and it must be published in two major newspapers in the Kingdom of Cambodia within seven days.

An administrator may be appointed by the court upon receiving the petition but prior to the opening of insolvency proceedings, or after the commencement is declared.

The duties and powers of the administrator are set out in the Insolvency Law and include taking all necessary or appropriate measures to protect the interests of all creditors. For an administrator appointed by the court prior to proceedings being commenced, this may in particular involve applying to the court for injunctive relief, being the freezing of assets or a stay of action by the creditors against the debtor/its assets, if the court has not already done so itself.

After the opening of insolvency proceedings, the management and power over the debtor's assets generally vests in the administrator, who is responsible for receiving all of the books and records of the debtor, selling the assets of the debtor's estate, managing or carrying on the debtor's business in order to fulfil the objectives of the insolvency proceedings, and exploring the prospects of the debtor's rehabilitation including proposing a "plan of compromise" (see below). However, the administrator is also required to make the fullest possible use of the experience, information and the management of the debtor, as the circumstances permit.

The administrator may apply to the court for certain transactions to be declared void by the court. The court may, upon a complaint by the administrator and upon a hearing of the other party to a certain transaction, adjudicate by judgment certain transactions. These transactions include: (i) transactions entered into with the intent to defraud creditors; (ii) transactions for no consideration or for less than market value; and (iii) transactions that are preferences,provided that they have been entered into within a specified period prior to the opening of insolvency proceedings. A specific period varies case by case in accordance with Article 32 of the Insolvency Law.

After the commencement of insolvency proceedings and until the termination, there is a stay on action by the creditors against both the debtor and its assets. However, there are exceptions to this rule. The administrator may allow a secured creditor to foreclose on its mortgage and sell the encumbered security to satisfy their claim, provided that the action is in "the best interest of the estate" (Article 19(2) of the Insolvency Law). Otherwise, the administrator can make an application to the court to freeze secured assets or for an order to stay any enforcement action taken by secured creditors.

Prior to a court ruling for liquidation, any party may submit a "proposed plan of compromise" to the creditors (see below). The court must take this plan into consideration when setting the deadlines for the creditors' meeting. However, if the court considers that the "rehabilitation of the debtor's business is not feasible and that it is unlikely that a plan of compromise will be approved" by the creditors, it may rule that the liquidation of the debtor's business be commenced immediately.

Priority on liquidation

The proceeds of liquidation shall be used to satisfy claims in the following order:

(1) employee wages, administrator's remuneration and fees, any administrative fees, and the court's fee;

(2) secured claims, up to the higher of the value of the secured portion of the claim as determined by the administrator or the relevant net proceeds from the sale of the secured asset;

(3) state taxes; and

(4) all other admissible unsecured claims.

Set-off

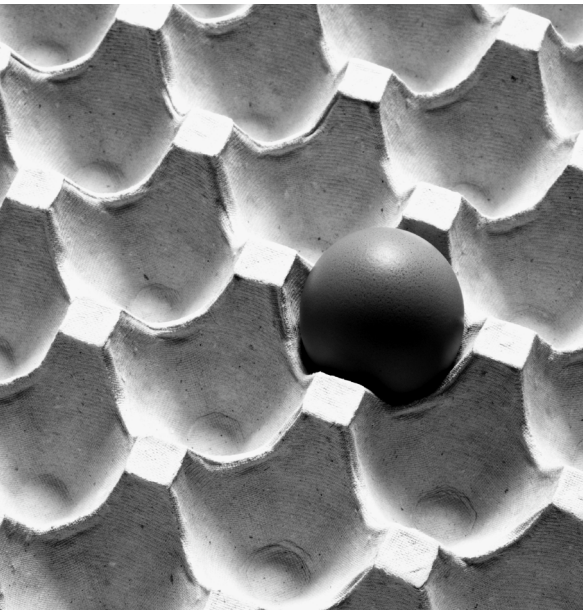
The opening of insolvency proceedings does not affect a right of set-off acquired by law or contract prior to the date of the opening of proceedings. Set-off by a creditor will be void, however, in the following circumstances:

- the creditor only became a creditor of the estate after the opening of insolvency proceedings;
- the creditor acquired their claim from another creditor after the opening of the insolvency proceedings;
- the creditor acquired the right of set-off by means of a transaction which is subject to contest or avoidance, for instance pursuant to a transaction effected with the intent to defraud creditors or at an undervalue; or
- the creditor's claim is of a kind listed in the Insolvency Law (claims excluded from the insolvency proceedings), such as claims for interest accruing after the commencement of proceedings or claims for repayment by holders of substantial equity interests.

Plans of compromise

As noted above, at the hearing of the petition for the opening of insolvency proceedings, the court may consider the rehabilitation of the debtor through a plan of compromise.

The plan of compromise is required to be f iled with the court at least seven days prior to the first creditors' meeting and will be voted on in the first creditors' meeting. At that meeting, the administrator will report on the debtor's business situation, indicate whether there is a chance of maintaining the debtor's business (in whole or in part) and the likelihood for approval and implementation of a plan of compromise and how such a plan would benefit creditors.



Any such plan would usually be a collaborative effort between the debtor and the administrator and may include any method for the resolution of the insolvency, including the continuation of the business by 6 the debtor. The plan should include the envisaged period of implementation (which cannot be more than two years) and the method by which the insolvency is to be resolved. The Insolvency Law gives the following as examples of possible resolutions:

- the cancellation, or reduction in the amount, of any claim, including in exchange for shares or equity in the debtor's business;
- the rescheduling of the payment of any claim;
- the continuation of the business of the debtor, or a part thereof, by the debtor or another person; and
- the sale or disposition of any asset of the estate, either subject to or free of any encumbrances or liens, or the distribution of all or any assets of the estate among those creditors having an interest in such asset.

Voting will be conducted by creditors divided into classes of (i) secured claims; (ii) authorities for unpaid taxes; and (iii) all other admissible unsecured claims.

A plan of compromise requires the approval of:

- creditors in every class, holding at least three-quarters of the claims of all creditors in that class, who are present at the meeting; or
- creditors in at least one class, holding at least three quarters of the total claims in value of all creditors, who are present at the meeting.

If approved by the creditors, the plan of compromise must be submitted to the court for approval within seven days. When deciding whether or not to approve the plan, the court will have regard to, amongst other things, whether voting was carried out in accordance with the procedure set out in the Insolvency Law and whether the creditors of each class will receive equal treatment under the terms of the plan.

The ruling should be made within seven days of the approved plan being presented to the court. Should the court reject the plan, it will rule that the liquidation of the estate be commenced. If the plan is accepted, it will be binding on all creditors. During the implementation period of the plan, the debtor or its managers will carry on the business of the company, although the court may order the administrator to continue to supervise the debtor's/managers' actions. If the plan falls behind its selfimposed schedule, the court may order the re-opening of insolvency proceedings and the immediate liquidation of the business.

Cross-border issues

Cambodia has not adopted legislation based on the UNCITRAL Model Law on Cross-Border Insolvency.

The Insolvency Law has jurisdiction over foreign companies that have tangible assets located within or that are required to be registered in the Kingdom of Cambodia and have their registered address in the Kingdom of Cambodia.

Cambodian law does not provide for the recognition and enforcement of foreign judgments. However, the Law on Recognition and Enforcement of Foreign Arbitral Awards allows the Cambodian courts to recognise and enforce foreign arbitral awards. Cambodia is also a party to the New York Convention.

Enforcement of security

Unlike many jurisdictions, in cases of insolvency, the payment of employees' salaries and the expenses of the administrator rank higher than the rights of a secured creditor, and enforcement of a security interest may be stayed unless the administrator believes it to be in the best interests of the debtor to allow otherwise.

In other situations, security interests are governed by the Secured Transactions Law. In general, under this law, in the event of default by a debtor, a secured party has a statutory right to take possession or control of the secured assets without needing to expressly include such right in the relevant security agreement. Simultaneously, it may also pursue any other rights and remedies provided in the security agreement and/or any related legislation. If the security is over bank accounts, receivables or other intangible property, following the occurrence of a default, the secured party may enforce directly against those assets without first obtaining a court ruling. In respect of all other secured assets, a secured party has the right to request an expedited judicial order from the court to authorise it to take possession and/or control of and/or sell the secured assets following the occurrence of a default. The proceeds of the disposal of the secured assets shall be applied first in satisfaction of the secured debt.

A secured party may also, after the occurrence of a default, elect to retain the secured assets in full or partial satisfaction of the relevant secured obligation. Such a proposal shall be notified to the debtor and to any other secured party from whom the f irst secured party has received a written claim of an interest in the secured assets. If no objection is received within 20 days of the notification, the secured party may retain the secured assets. If an objection is received, the secured party must dispose of the secured assets.

Different types of security

Two forms of security interest are recognised under the Secured Transactions Law:

- security interests over immoveable property; and
- security interests over moveable property.

There is no concept of fixed and floating security explicitly detailed in the Secured Transactions Law, however, such concepts are accepted in Cambodia.

The Land Law, dated 30 August 2001, sets out how security is taken over immoveable property. Immoveable property may secure the payment of a debt by way of mortgage, an antichrèse or a gage:

(1) only property registered with the Land Registry may be the subject of a mortgage. The mortgage is a surety in rem; the debtor retains possession of the property but, on enforcement, the creditor has the right to apply to the court for a ruling that the property be sold regardless of who holds the property on that date. Priority is established by registration with the body in charge of recording land documents under the Ministry of Land Management, Urban Planning and Construction (the cadastral administrative body); 9

(2) an antichrèse is a right in possession equivalent to a pledge. The creditor has the right to cause a forced sale of the property by court decision and has priority over all other creditors in enforcement provided that the antichrèse has been registered with the cadastral administrative body. If the creditor occupies the property, they have a duty to maintain the property as their own; and

(3) a gage is a written contract recorded in the Cadastral Registry by which the certificate of title to the immoveable property is delivered to the creditor in consideration of the credit provided. Enforcement is by court-ordered foreclosure.

Security interests over moveable property should be registered with the Secured Transactions Filing Office to ensure perfection and priority. It is also possible to perfect a security interest over certain moveable property by taking physical possession of that property. There is no statutory obligation to file nor a time limit for filing. However, as priority is established by registration, it is advisable to file as soon as practicably possible after the security interest is created. From the date of the filing, the security interest is perfected for a period of five years.

After five years, it is necessary to file "continuation statements" every five years throughout the security period. Continuation statements can be filed at any time in the six-month period prior to the expiry of an existing filing. If a continuation statement is not filed, the registration of the security becomes ineffective and priority is lost. If there are no outstanding secured obligations, the secured parties are obliged to file a termination statement.

Key contacts

This factsheet has been prepared with the assistance of Edenbridge Asia (in commercial association with CSP & Associates) of Phnom Penh, Cambodia.

If you require advice on any of the matters raised in this document, please contact any of our partners or your usual contact at A&O Shearman, or email **rab@aoshearman.com**.

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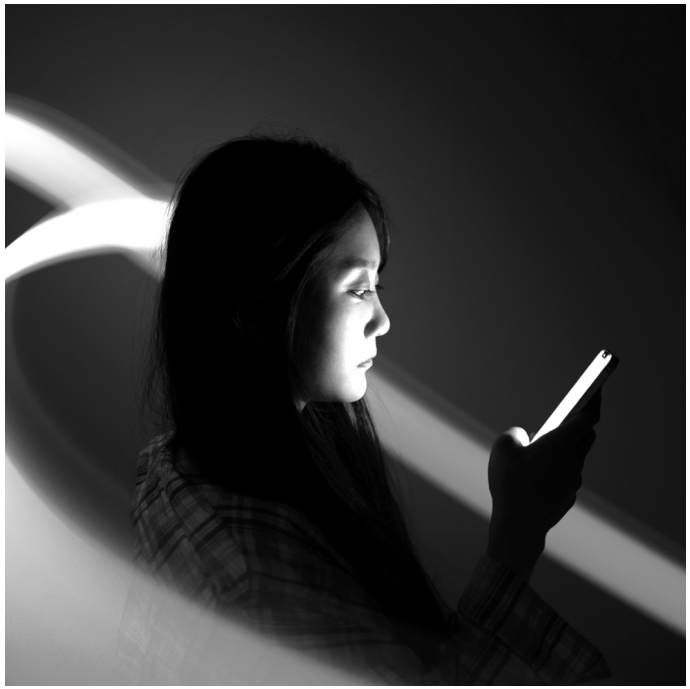
Further information

Developed by A&O Shearman's market-leading Restructuring group, "**Restructuring Across Borders**" is an easy-to-use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe, Asia, the Middle East and the U.S.

To access this resource, please **click here**.



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