



International bankruptcy law

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The armour of bankruptcy proceedings protects against



- Legal actions
- Executions
- Creditor application
- Enforced liquidation
- Criminal Prosecution

Other economic advantages :

- Abolition of disadvantageous contracts (rents, insurances, leasing, franchising etc.)
- Layoff of employees without observance of long notice periods
- Recovery of advance payments
- Recovery of voidable payments to creditors



Famous brands filed for bankruptcy since March 2020

Department store JCPenney

Tommy Hilfiger

Ryan Air

Hertz

Victoria Secret UK

Debenham

Fauchon France

Technicolor

FC Kaiserslautern

Galeria Karstadt Kaufhof



Outlook

Credit insurance company Euler Hermes estimates that by the end of 2021 all regions across the world will post double-digit increases in insolvencies, with the biggest surges expected to occur in

- North America (+57% compared to 2019)
- Central and Eastern Europe (+34%)
- Latin America (+33%)
- Western Europe (+32%)
- Asia (+31%)



Overview

- Modern legislation requires modern insolvency law
- Always remember that in a capitalist economy there is no shame in using legal means of debt relief
- All European countries and most countries in ASEAN offer a modern and convenient legal background for either winding up (liquidation) or restructuring of an insolvent corporation
- Private bankruptcies ensure personal rehabilitation without a fixed quota to creditors



International Insolvency Law

The EU has own Insolvency Regulations ('EIR').

The OECD Framework on international insolvency and the UNICITRAL Model Law were adopted by some ASEAN countries but does not provide a real “cross-border procedure”.

Earlier, each country protected its own creditors through preferential access to assets located in the country. This meant that in every country where assets exist, separate proceedings must be opened. Thus, a trustee/administrator/ judicial manager appointed in Singapore could not access your assets in Europe. This has changed since the implementation of the COMI system.



UNCITRAL Model Law on Cross-Border Insolvency

Australia
Bahrain
Benin
Brazil
Burkina Faso
Cameroon
Canada
Central African Republic
Chad
Chile
Colombia
Comoros
Congo
Côte d'Ivoire

Democratic Republic of the Congo
Dominican Republic
Equatorial Guinea
Gabon
Greece
Guinea
Guinea-Bissau
Israel
Japan
Kenya
Malawi
Mali
Mauritius
Mexico
Montenegro
Myanmar

New Zealand
Niger
Panama
Philippines
Poland
Republic of Korea
Romania
Senegal
Serbia
Seychelles
Singapore
Slovenia
South Africa
Togo

Uganda
United Arab Emirates
Dubai International Financial Centre
United Kingdom of Great Britain
Great Britain
British Virgin Islands
Gibraltar
United States of America
Vanuatu
Zimbabwe
(a) Overseas territory of the United Kingdom of Gr



Singapore Cross Border Insolvency Law

- With the 2017 amendments to the Companies Act, the UNCITRAL Model Law on Cross-Border Insolvency (“Model Law”) now has the force of law in Singapore. The Model Law is a framework of rules providing the mechanisms for dealing with cases of cross-border insolvency.
- Foreign representatives can apply to commence or participate in a proceeding under Singapore insolvency law.
- Foreign representatives can apply to the High Court for recognition of foreign proceedings.
- A foreign proceeding is recognised as a foreign main proceeding, if the foreign proceeding takes place at the debtor's centre of main interest (COMI).
- Foreign creditors can file their claims in the Singapore procedures or Singapore creditors in the European procedures.



Austrian Cross Border Insolvency Law

- EU Insolvency Regulation ('EIR') is directly applicable
- Austria court has jurisdiction to open a main insolvency proceeding, if the debtor's center of main interest ('COMI') is situated in Austria.
- Any judgment opening an insolvency proceeding handed down by a court of a member state, which claims jurisdiction pursuant to Art 3 EIR, shall be automatically recognised in all other member states.
- For cross-border insolvencies not governed by the EIR, Austrian International Insolvency Law (Art 217 – 251 BA) determines, as a general rule, that an Austrian insolvency proceeding shall also include all assets of the debtor situated abroad (principle of universality). An exception is made if an insolvency proceeding was opened in a state, where the debtor's COMI is situated and if these assets are included in this proceeding (Art 237(1) BA).



Recognition of cross border insolvency in other ASEAN countries

- MYANMAR: Procedures by foreign courts are recognized if relating to the same debtor.
- THAILAND: Follows the territoriality principle (as opposed to the universality principle) and has not adopted the UNCITRAL Model Law on Cross-Border Insolvency. Nor is Thailand a signatory to any treaties on international insolvency.
- PHILIPPINES: The Model Law on Cross-Border Insolvency of the United Nations Center for International Trade and Development has been adopted as part of the local insolvency law.



Voidable Transactions

- The avoidance provisions are found in all modern insolvency laws and are of great importance in the management of the insolvent estate in winding up or judicial management.. If successfully invoked, they mandate the clawing-back of property transferred by the transactions or a reversal of their effects.
- The Austrian insolvency law primarily provides for the following situations of contestation:
- The periods run retroactively from the opening of the insolvency proceedings from 60 days for preferential treatment, 1 year for a dissipation of assets to 10 years for discrimination.
- A successful challenge to a legal transaction or legal act often leads to the revival of personal liability



Personal Liability of Board Members, Directors

Singapore and Austria have a similar catalog of personal liabilities of corporate officers:

- **Fraudulent Trading**
Business of the company has been carried on with an intent to defraud creditors of the company or creditors
- **Wrongful Trading**
Negligently entering of new debts in the knowledge that not all debts can be satisfied
- **Breach of directors' duties affecting creditors**



Personal Liability of Shareholders

- You should also be concerned about your liability for assumed and unpaid share capital.
- In contrast to Singapore, a certain percentage of the registered share capital must be paid up in Austria. No proof of payment is required in Singapore. The liability of the shareholders does not expire until the capital is fully paid up. Caution is also advised in management buyouts and employee participation models.
- In exceptional cases, shareholders with fully paid-up capital may also be called upon to assume personal liability. This is particularly the case if the shareholder himself manages the company, gives instructions that are detrimental to creditors or only appoints a nominee director/manager.



Restructuring and Rehabilitation

- In general, the insolvency laws in all countries were designed to liquidate the company and distribute the liquidation proceeds to creditors.
- The modern trend, however, is more in the direction of maintaining the company and restructuring. Thus, in all insolvency laws of the ASEAN countries this possibility of restructuring is found, as in Austria.
- Almost always the quota offer of the debtors is bound to the agreement of the creditors with a certain quorum. For example, in Austria a compensation proposal can be accepted with 51% of the voting capital, in other countries with 2/3 or 3/4. By accepting and fulfilling the restructuring plan, the debtor is released from his remaining obligations.
- Singapore, Myanmar, Thailand, Philippines and all EU countries offer private bankruptcy. Here are various conditions for debt relief, but no minimum quota.



Advertisement of a US lawfirm in D.C.

No shame, no blame, if you open Chapter 11 proceedings, do it, but do it quickly, file today, but go as slow as you can, that will give you time to restructure.



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