Dispute Resolution

New Regulation Aims To Improve Transparency In Insolvency Proceedings

At the end of 2018, the Minister of Law and Human Rights ("**MOLHR**") enacted a new regulation[1] relating to insolvency practitioners (receivers in bankruptcy proceedings and administrators in suspension of payment/PKPU process) ("**Regulation 37/2018**"). Regulation 37/2018 comes into effect in December 2018 and repeals the previous regulation[2] governing insolvency practitioners.

Regulation 37/2018 is aimed to improve transparency in an insolvency process by allowing stakeholders access to various information regarding the insolvency process. In addition, going further than the previous regulation, this Regulation also simplifies the process for registration and submission of report by allowing these to be done electronically.

This improvement is also evidence of the Indonesian government's effort in increasing its ranking in the World Bank's Ease of Doing Business ("**EODB**") programme as one of the indicators for positive ranking is creditors' participation index in resolving insolvency.

At a Glance: What's New on Regulation No. 37/2018

Besides the establishment of an online system for, among others, registration and extension of registration in the official website of the Directorate General of Public Laws Administration, Regulation 37/2018 also requires an appointed receiver and administrator to submit online a quarterly report of their management activity and any settlement of assets undertaken or any suspension of debt payment obligation.

Moreover, although the previous regulation already introduces the concept of the Joint Committee, Regulation 37/2018 sets out a non-exhaustive list of the Joint Committee's duties.

Compulsory Report

Under Regulation 37/2018, an appointed receiver and administrator must now submit a quarterly report on each activity and transaction conducted by them during the insolvency process. This report is to be submitted online through the official website of the Directorate General of Public Laws Administration. It is worth noting that as of February 2019, the website is still under development.

An appointed receiver and administrator must submit the following reports: (i) report on their appointment as a receiver or administrator; (ii) a quarterly report on the insolvency process up to its completion, and (iii) a final report.

[1] MOLHR Regulation No. 37 of 2018 on Requirements and Procedure for Registration and Submission of Report by Receivers and Administrators.
[2] MOLHR Regulation No. 18 of 2003 on Requirements and Procedure for Registration of Receivers and Administrators.

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Report on Appointment as Receiver or Administrator

A receiver and administrator appointed by the Commercial Court must submit a report of their appointment online. Such report must be submitted at the latest within 14 business days as of the receipt of the insolvency decision by the receiver and administrator, as well as the supervising judge. This is designed as an automatic safeguard to implement the limitation under the Bankruptcy Law[3] where a receiver or administrator can only handle up to a maximum of three insolvency cases.

Based on socialisation of Regulation 37/2018 by the MOLHR, as well as informal discussion with an official of MOLHR, we understand that once established, the online system will automatically block the fourth registration by any receiver and administrator.

Quarterly Report on the Insolvency Process

An appointed receiver and administrator must also submit a quarterly report on the insolvency process up to its completion. The quarterly report must at least include information on:

(a) matters occurring and any legal actions taken during the reporting period, which includes, at least, the result of the first creditors' meeting, debt verification meeting, auction or winding-up;
(b) the amount of payment made to the creditors; and
(c) any remaining outstanding debt (principal amount and interest).

At the end of the insolvency process, a receiver and administrator must also submit a final report. This final report must at least include information on:

(a) a summary of the main actions taken in relation to the insolvent estate since the commencement of the insolvency process;
(b) a list of all assets registered as of the commencement of the insolvency process;
(c) a list of all assets obtained during management and settlement of the insolvency;
(d) a list of all assets sold, including proceeds obtained from such sales; and
(e) a list of all payments made during the management and settlement of the insolvency process, including details of the recipient of such payment, amount of payment, date of payment and purpose of payment.

The final report must be submitted at the latest within 30 business days as of the announcement of the completion of the insolvency process by the receiver and administrator. Failure to do so may subject the receiver or administrator to oral and written warning, and in some cases, a 90-day temporary discharge from the list of administrator and receiver.

Although this reporting obligation mirrors the obligation that is already stipulated under the Bankruptcy Law, it goes even further by requiring the report to be submitted not only to the supervisory judge, but also to the online system of the Directorate General of Public Laws Administration. Further, despite it

[3] Law of the Republic of Indonesia No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations.

already being an obligation under the Bankruptcy Law, in practice, submission of reports is often overlooked, and reports are submitted late or not at all. Even if a report is submitted, gaining access to such report is often a challenge in itself.

Joint Committee

As mentioned earlier, Regulation 37/2018 also sets out a non-exhaustive list of the Joint Committee's duties. Some of these duties are as follows:

(a) to give recommendation to the Professional Association to hold training and examination for receiver and administrator;
(b) to establish a training curriculum for receiver and administrator;
(c) to receive a report on the implementation of any training for receiver and administrator, as well as result from the examination held by the Professional Association;
(d) to evaluate the material and trainer for the training;
(e) to revoke recommendation for the implementation of training and examination for receiver and administrator; and
(f) to receive and examine any complaints from the public regarding any false reporting by a receiver and administrator and to forward such complaints to the Professional Association for their further action.

With regards to complaints, it is worth noting that Regulation 37/2018 does not state any information on enforcement actions that can be taken by the Professional Association.

Conclusion

In conclusion, it is hoped that the introduction of an online system for insolvency proceedings will improve access and transparency. While it will certainly improve access for receivers and administrators in relation to their registration and submission of report, it is expected that the biggest impact will be felt by the creditors, who would be able to easily access information about debtors in insolvency proceedings online.

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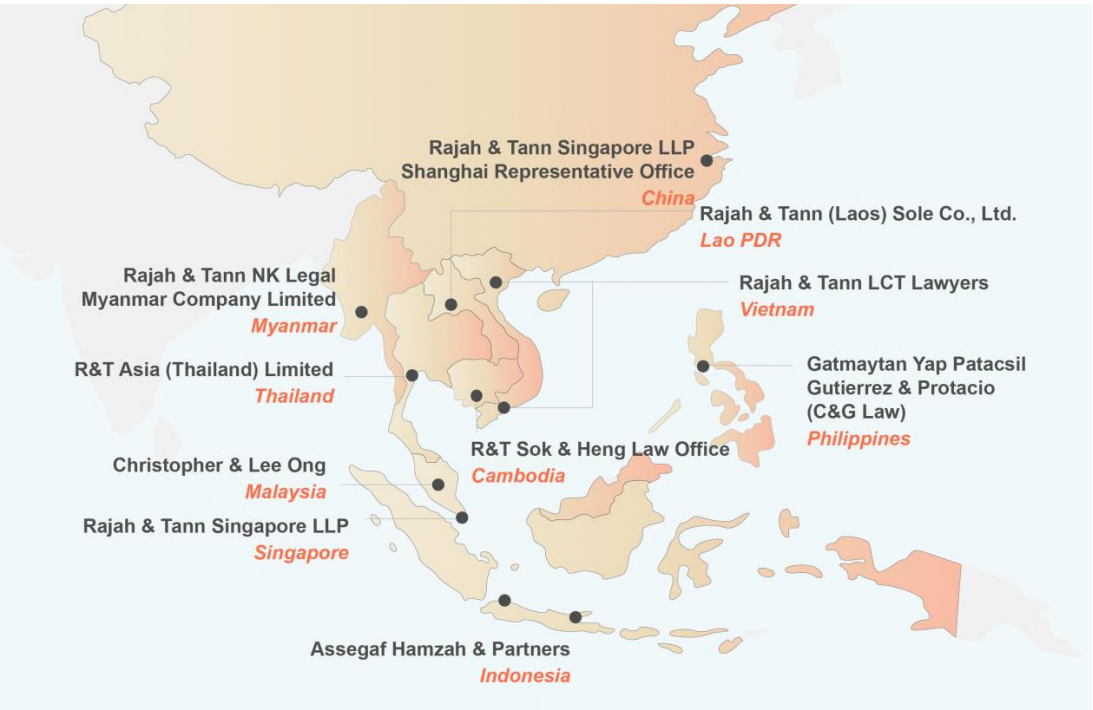

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