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Beyond the Economic Turmoil of the Asian Financial Crisis: Indonesia's Struggle to Cope with Insolvency

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Beyond the Economic Turmoil of the Asian Financial Crisis: Indonesia's Struggle to Cope with Insolvency

Michelle Schreiber*

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* J.D., University of the Pacific, McGeorge School of Law, to be conferred 2000; B.S., Business Administration, California State University, Fresno, 1997. I would like to thank my Mom and new Dad for their love and faith in me.

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I. INTRODUCTION

Indonesia is the world's fourth largest country and "is the pivotal state in Asia."¹ Until mid-1997, Indonesia was viewed as a "leading economic success story"² and enjoyed the world's confidence in its overall stability.³ Specifically, the country's real gross domestic product growth exceeded that of the United States and averaged over seven percent from 1987 to 1997.⁴ This, in turn, encouraged foreign investment and the extension of credit to Indonesian companies.⁵ Another factor

1. Andrew MacIntyre, *I'm Shocked, Shocked, to Find That Cryism Is Going on in East Asia; We May Rue the Day the U.S. and the IMF Saved Suharto*, L.A. TIMES, Jan. 18, 1990, at M1, available in LEXIS, News Library, Lat File; see also *1997-98 In Indonesia: Deep Crisis Shocks Indonesians and Obscures Underlying Strengths in Economy*, 20 No. 3 E. Asian Executive Rep. 9 (1998) [hereinafter *1997-98 In Indonesia*] (claiming Indonesia is the anchor of Southeast Asia); see also *Indonesia: Economic Trends and Outlook, 1998*, INT'L. MARKET INSIGHT REP., Aug. 13, 1998, available in WL 13711597 [hereinafter *Economic Trends and Outlook*] (asserting Indonesia is central to Southeast Asia).

2. *Economic Trends and Outlook*, supra note 1; see also *1997-98 in Indonesia*, supra note 1 (discussing the decade of economic growth the country has enjoyed); see also *Country: Indonesia*, KALEIDOSCOPE (1998) (asserting the IMF listed Indonesia seventh among the top ten emerging economies in 1996); cf. Thomas Krider, Comment, *Taking Another Look at the Regulation of Mutual Funds in the Aftermath of the Asian Financial Crisis*, 7 PAC. RIM L. POL'Y 427, 429 (1998) (stating "Asian economic expansion had been lauded throughout the 1990s as the blueprint for the economic salvation of developing nations").

3. See generally *1997-98 in Indonesia*, supra note 1 (attributing foreign investment as one of the factors contributing to the country's economic growth). Foreign investment would not have occurred without confidence in the country's economic stability. *Id.*

4. See *Economic Trends and Outlook*, supra note 1 (discussing other strengths of the Indonesian economy prior to the Asian financial crisis' impact).

5. See R. Carter Pate & Denise C. Andrews, *The IMF Rescue: Asian Economies Propose Turnaround Plans to Obtain Financing*, 17-NOV AMER. BANKR. INST. J. 20, 20 (1998) (stating that "[i]n 1996, nearly half of the total foreign capital invested in developing countries went to Asia"); see also *1997-98 in Indonesia*, supra note 1 (reasoning foreign investment was a contributing factor to the economic growth in Indonesia); see also *Economic Trends and Outlook*, supra note 1 (claiming the long-term economic growth encouraged foreign investment).

contributing to Indonesia's growth and overall stability was the country's political soundness,⁶ in that President Suharto had led the country since 1965.⁷

However, in 1997, the Asian financial crisis commenced and, to date, has terminated this lengthy period of prosperity for Indonesia.⁸ Although much speculation still exists as to whether the country will ever completely recuperate, no such restoration is currently within sight.⁹

In attempting to return to a period of economic prosperity, Indonesia has been forced to vary from the status quo and face a new society. In doing so, Indonesia has not taken a passive approach, but has swallowed its pride and accepted help and instituted changes ranging from political to economic reformation.¹⁰ These changes were largely in exchange for the monetary support provided primarily by the International Monetary Fund (IMF).¹¹

Specifically, this Comment examines Indonesia's enactment of three regulations: (1) The amendments to the bankruptcy law, popularly referred to as "the new bankruptcy law;"¹² (2) The Jakarta Initiative;¹³ and (3) INDRA.¹⁴ These laws were enacted in reaction to the widespread-insolvency throughout the private sector of the Indonesian economy resulting from the aftermath of the Asian

6. See *infra* note 256 (explaining that the literature on this subject suggests a direct relationship exists between the political stability of a country and its economic prosperity).

7. See Nayan Chanda, *Surges of Depression: Doom and Gloom have Characterized Most of the Region's Economies Throughout the Year; And Though Some Profess to See Signs of Recovery, Most Others Fear that the Tidal Wave Created by Asia's Crisis Will Continue to Wreck Economies*, FAR E. ECON. REV., Dec. 31, 1998 (outlining the events which led to the resignation of President Suharto). In 1998, President Suharto was reelected to his seventh five-year term. In April, 1998, an Indonesian political movement, known as the "reformasi," began picking up speed when students demonstrated and demanded economic and political reform in the nations capital, Jakarta. Despite President Suharto's vow to repress protests, student rioting continued and grew into other major cities. *Id.* In May, 1998, student riots escalated and resulted in the death of six students who were shot by police. *Id.* This event increased the reformasi movement from student-led protests to a popular uprising. *Id.* Eventually, President Suharto was forced to resign.

8. See *1997-98 in Indonesia, supra* note 1 (reviewing Indonesia's economy preceding the Asian financial crisis and delineating the impact of the crisis); see also *Economic Trends and Outlook, supra* note 1 (exploring the weaknesses of the Indonesian economy in the aftermath of the Asian financial crisis).

9. See *infra* notes 253-56 and accompanying text (asserting many political and economic weaknesses still exist and require reformation before economic stability will be restored).

10. See *infra* notes 94-122 and accompanying text (discussing the role of the IMF in Indonesia's attempt to restore its economy).

11. See *infra* notes 113-20 and accompanying text (examining the terms of the agreement in exchange for the money loaned).

12. See *infra* notes 106, 110-12, 117-20 and accompanying text (addressing the implementation of a reformed bankruptcy law in exchange for monetary support). The amendments were enacted in August 1998, as part of package of reforms promised in exchange for money loaned by the IMF. *Id.* The amendment is referred to as the new bankruptcy law because, despite the literal existence of a bankruptcy law, this law was not employed. See *infra* notes 65-71 and accompanying text (exploring the deficiencies of the original law). It was hoped that the new amendment will change this and create a utilized bankruptcy law. See *infra* notes 126-54 and accompanying text (examining the amendments to the bankruptcy law).

13. See *infra* notes 155-98 and accompanying text (reviewing the provisions of the Jakarta Initiative).

14. See *infra* notes 199-206 and accompanying text (describing the purpose and terms of INDRA the Indonesian Debt Restructuring Program).

financial crises¹⁵ and are part of a plan to regain economic stability. This Comment begins by outlining the original Indonesian insolvency law, which will serve as a source of comparison for the new laws.¹⁶ This Comment then briefly summarizes the initiation of the Asian financial crisis and how it led to the deterioration of the Indonesian economy.¹⁷ Due to the large role the IMF played in the regulatory changes inaugurated in Indonesia, the bailout package conceived on behalf of the Country is also examined.¹⁸ With the foregoing background established, this comment then delineates the provisions of the three regulations central to the future handling of debtor and creditor relationships.¹⁹ Finally, this Comment analyzes the implementation and effectiveness of these various regulations.²⁰

II. HISTORY

In order to appreciate the significance of the enactment of the three regulations, it is essential to understand the original insolvency law,²¹ how and why the need for reformation arose,²² and the role of the IMF.²³

A. The Original Insolvency Law

Prior to the enactment of new bankruptcy legislation in August 1998, only one insolvency law had been enacted, and it had been amended only once. This law, the Indonesian Bankruptcy Code, was enacted in 1906²⁴ and duplicated the Dutch

15. See *infra* notes 106, 110-12, 117-20 and accompanying text (detailing the context in which the amendments to the bankruptcy law were enacted); see also David A. Sanger, *Decisions by U.S. and I.M.F. Worsened Asia's Problems, The World Bank Finds*, N.Y. TIMES, Dec. 3, 1998, at A20 (stating estimated bankruptcy levels in Indonesia are at seventy-five percent); see also *World Bank Takes Dim View of the IMF Measures*, STAR TRIB., Dec. 3, 1998, at 1D (quoting the World Bank's chief economist as stating that a country cannot perform with seventy-five percent of its businesses bankrupt).

16. See *infra* notes 24-71 and accompanying text (examining the 1906 Bankruptcy Act).

17. See *infra* notes 72-93 and accompanying text (setting forth the initiation of the Asian financial crisis and its effect on Indonesia).

18. See *infra* notes 94-122 and accompanying text (considering the role of the IMF and the monetary support it gave to Indonesia).

19. See *infra* notes 123-207 and accompanying text (reviewing the purposes and provisions of each of the three regulations enacted to cope with the wide-spread insolvency throughout Indonesia).

20. See *infra* notes 208-56 and accompanying text (exposing the strengths and weaknesses of the three regulations).

21. See *infra* notes 24-71 and accompanying text (delineating the terms of the 1906 insolvency law).

22. See *infra* notes 72-93 and accompanying text (outlining the events that resulted in wide-spread insolvency throughout Indonesia).

23. See *infra* notes 94-122 and accompanying text (discussing the role of the IMF and the agreement given in exchange for monetary support).

24. See THOMAS H. REYNOLDS & ARTURO A. FLORES, *FOREIGN LAW: CURRENT SOURCES OF CODES & LEGISLATION IN JURISDICTIONS OF THE WORLD, INDONESIA*, III1-13, at 13 (1994) (stating the bankruptcy law was originally enacted in 1905 and subsequently amended in 1906). The Dutch Bankruptcy Act is popularly cited as being enacted in 1906, omitting the original 1905 version. *Id.*; see, e.g., Emalia Achmadi & Jaap J. Trommel, *Indonesia's Sound Law and Broken Courts*, WALL ST. J., Mar. 11, 1998, at 6; Robert N. Hornick, *Indonesian*

Bankruptcy Act.²⁵ Both laws²⁶ have as their purported purpose to advance the financial interest of creditors.²⁷ Therefore, the Indonesian Bankruptcy Code weighs heavily in favor of creditors²⁸ and did not provide debtors with a fresh start.²⁹

In staying with its pro-creditor tradition, the Indonesian Bankruptcy Code provides for a wide variety of creditor remedies: (1) Chapter One establishes an asset distribution framework that maximizes the amount apportioned out to creditors;³⁰ (2) Chapter Two allows for a moratorium procedure;³¹ (3) The Code grants a wide latitude of power to the court-appointed receiver to generate as much profit as possible on behalf of the insolvent company;³² and (4) Indonesia's Company Law provides for directors to be held personally liable for debts if the

Bankruptcy Law Protects Creditors, 17 INT'L FIN. REV. 24, 24 (1998) (stating the insolvency law was enacted in 1906 without making any reference to the 1905 version).

25. See Achmadi & Trommel, *supra* note 24 (adding that the numerous Dutch amendments have barely altered the Act and that it is regarded as one of the finest examples of Dutch legislation). The Dutch bankruptcy legislation was enacted in 1896. See *id.*; but see Hornick, *supra* note 24 (commenting the Dutch bankruptcy Act was enacted in 1893). Discrepancies exist as to when exactly the Dutch Bankruptcy Act was enacted, although the general consensus appears to be 1896. In the middle of the 16th Century, the Dutch defeated the English military and subsequently established the 13,500 islands of Indonesia under Dutch rule. See REYNOLDS & FLORES, *supra* note 24, at IIII-5 (stating as a consequence, the vast majority of Indonesian law either replicates or is heavily influenced by Dutch law).

26. Because the Indonesian Bankruptcy Code duplicates the Dutch Bankruptcy Act, it can be deduced that the commentary describing the Indonesian law is equally applicable to the Dutch law.

27. See Hornick, *supra* note 24, at 24 (distinguishing bankruptcy laws which favor the debtor's interest by providing a fresh start); see also Achmadi & Trommel, *supra* note 24 (acknowledging the Indonesian bankruptcy law advances the interests of the creditors).

28. See Achmadi & Trommel, *supra* note 24 (citing Philip Wood, *Principles of International Insolvency*, Sweet & Maxwell, 1995); see also Hornick, *supra* note 24, at 24 (illustrating the "pro-creditor" nature of the law by examining the individual provisions of the 1906 bankruptcy law).

29. See Hornick, *supra* note 24, at 24 (warning the only material affect of this is that individual debtors continue to be liable for the entirety of their debts after the discharge of the bankruptcy). In comparison to the U.S.' bankruptcy laws, the purpose of bankruptcy is to provide the debtor with a clean slate free of debt, regardless if the liquidation of the debtor's estate is unsuccessful in satisfying all of the debtors' then existing debts. See Martin N. Flics & Michael J. Ireland, *Bankruptcy and the Problems of Multi-Jurisdictional Workouts*, 592 PRACTICING L. INSTT. 415, 424; see also *In re Hollanger*, 15 Bankr. 35, 48 (Bankr. W.D. La. 1981) (describing an "express Congressional policy in favor of rehabilitating debtors and maintaining the equity in their property").

30. See Achmadi & Trommel, *supra* note 24 (examining the bankruptcy law and its respective provisions); see also Hornick, *supra* note 24, at 25 (explaining general creditors receive pro rata apportionment of their claim from the liquidation of the debtor's estate after secured creditors are paid in full).

31. See Achmadi & Trommel, *supra* note 24 (referring to this pro-creditor term as the "suspension of payments proceeding"). Such a provision is pro-creditor because it provides the creditor with the alternative of postponing receipt of payment, versus a complete discharge of the debt. This is significant in comparison to the system employed in the United States, which provides the debtor with a fresh start. See Achmadi & Trommel, *supra* note 24 (highlighting the different results procured under bankruptcy under the 1906 Indonesian Bankruptcy Code and the U.S. Bankruptcy Code); see also Hornick, *supra* note 24, at 26 (explaining moratorium is actually an alternative to bankruptcy by suspending the payment of debts owed to general creditors). A petition for moratorium may be filed by either the debtor or any of the debtor's creditors, at which point the court will appoint a receiver to manage the debtor's business throughout the moratorium. *Id.* However, the moratorium holds little value to the debtor because it can only be used against general creditors, and not secured or preferred creditors. *Id.*

32. See Achmadi & Trommel, *supra* note 24 (maintaining the receiver generates profit by assuming management of and running the business).

directors' mismanagement of the company resulted in the bankruptcy.³³ Significantly, the Indonesian Bankruptcy Act does not result in a discharge of the debtor's debts,³⁴ but rather preserves the debtor's liability to creditors even after the adjudication.³⁵ Furthermore, the Bankruptcy Act respects preferences obtained prior to the insolvency.³⁶

Under the Indonesian Bankruptcy Act, any natural or juridical³⁷ person is eligible for bankruptcy if domiciled within the country.³⁸ If a debtor defaults on his debts, bankruptcy may be sought by the debtor, the debtor's creditors, or, if it is in

33. See *id.* (adding that shareholders are not liable for the debts of a debtor-company); see also Hornick, *supra* note 24, at 26 (emphasizing the presumption is that directors are jointly and severally liable for losses resulting from the directors' fault or negligence and avoidance of such liability requires proof to the contrary). Beyond the potential for personal financial liability, directors may also be susceptible to imprisonment for up to sixteen months if the director engaged in: 1) assisting or authorizing the commission of acts in violation of the company's articles of incorporation, where all or part of a financial loss by the debtor resulted from these acts; or 2) assisting in or authorizing the procurement of a loan under "onerous" conditions with the intention of avoiding bankruptcy and knowing his actions will not avoid bankruptcy; or 3) failure to keep adequate books and records according to article six of the Commercial Code. *Id.* Furthermore, a director of a debtor deemed bankrupt can serve up to seven years of prison if, with the intent to defraud creditors, he engages in: 1) recording non-existent expenses on the debtor's books or failed to record profits or deleted assets of the debtor; or 2) transferring an asset of the debtor for less than its market value or without receiving value for it; or 3) preferring a creditor over other creditors while knowing that bankruptcy cannot be avoided; or 4) failing to conform to proper bookkeeping standards as established by the Commercial Code. *Id.*

34. See Hornick, *supra* note 24, at 24 (specifying a bankruptcy judgement creates a lien terminating the debtor's power over the debtor's property and the effect of bankruptcy, with the exception of secured creditors, is the moratorium of creditor's claims). Conversely, the U.S. Bankruptcy Code provides for a complete discharge of the debtor's obligation to pay debts pursuant to a Chapter 7 proceeding. See Flics & Ireland *supra* 29. In this situation, a trustee is charged with the duty of gathering all of the debtors assets, liquidating them, and satisfying the greatest proportion of debt as possible. *Id.* Under this system, creditors are paid in order of priority and pursuant to a pro rata apportionment. *Id.* Under Chapter 11 bankruptcy, the debtor's obligation to make payments to creditors is suspended while the debtor and creditors work to formulate a reorganization plan, which may allow for the debtor to pay back debts over a number of years. See Flics & Ireland, *supra* note 29, at 426.

35. See Hornick, *supra* note 24, at 24 (explaining the status of a debtors liability upon an adjudication of bankrupt); see also *supra* note 29 and accompanying text (comparing the Indonesian bankruptcy law's preservation of debt to the United States' policy of providing the debtor with a fresh start).

36. See Achmadi & Trommel, *supra* note 24 (showing this is consistent with the insolvency law's general respect of all accrued rights). This is significant when compared with the United State's bankruptcy law, which gives the bankruptcy court the authority to void preferences. See *infra* note 151 (discussing the United States'—bankruptcy courts' authority to preserve creditors' rights and interests). Compare this with the 1998 amendments, which give the commercial court the authority to void preferences. See *infra* note 152 and accompanying text (asserting the commercial court's authority to void transactions that are detrimental to the creditors).

37. BLACK'S LAW DICTIONARY 853 (6th ed. 1990) (defining "juridical" as "in conformity with the laws of the country and the practice which there observed"). Presumably, the phrase "juridical person" was used to convey the concept that any person or entity, as prescribed by the laws of Indonesia, may seek bankruptcy within the country.

38. See Hornick, *supra* note 24, at 24 (explaining who qualifies as an eligible debtor under the 1906 bankruptcy law).

the public's interest to do so, the public prosecutor.³⁹ The petition for bankruptcy is filed in the district court that has jurisdiction over the debtor's place of domicile, and the rules of evidence do not apply.⁴⁰ Upon the filing of the petition for bankruptcy, the court must immediately adjudge the debtor's status and deem the debtor bankrupt if past due debts exist.⁴¹ The effect of a debtor being adjudicated bankrupt is that a lien is placed over the debtor's property.⁴² In the event of a judgement of bankruptcy, the debtor has the opportunity to appeal within fourteen days or eight days, depending on whether the debtor had prior notice of the proceeding.⁴³ However, such an appeal does not stay the bankruptcy.⁴⁴

After declaring a debtor bankrupt, the judge has fourteen days to establish a deadline for all creditors to submit their claims to the court and to determine the time and place for a gathering of the judge, receiver, debtor, and any creditors who desire to attend.⁴⁵ This meeting is called a verification meeting, and its purpose is to review all of the claims filed by creditors and determine which are secured,⁴⁶

39. See *id.* (highlighting a reasonable interpretation of the Act in light of its duplication of the Dutch bankruptcy law is the requirement of the debtor defaulting on at least two creditors). This interpretation is verified under the 1998 amendments. See *infra* notes 126-54 and accompanying text (discussing the 1998 amendments to the Indonesian Bankruptcy Code).

40. See Hornick, *supra* note 24, at 24 (reviewing the procedure of the adjudication of a bankruptcy under the Indonesian 1906 Bankruptcy Code).

41. See *id.* (warning a debtor need not be delinquent on all accounts and it is irrelevant why the debtor is in default). The reality under the original insolvency law was that the judiciary did not adjudicate the debtor's status quickly. See RI 'Lacks Experts for New Bankruptcy Law,' JAKARTA POST, Aug. 6, 1998 (comparing the 1998 amendments to the 1906 bankruptcy law, "which allowed debtors to delay cases almost indefinitely"); see generally *Indonesia Bankruptcy Law-2: Avoid Bensoel Scenarios*, DOW JONES NEWS SERVICE, July 31, 1998 (highlighting an instance in which the creditors of a bankrupt Indonesian company waited six years for an adjudication and was finally settled). Consequently, the amendments to the law specifically require that the adjudication transpire within thirty days of the filing of the petition, with an additional thirty day allowance for appeal. See *infra* notes 139-54 and accompanying text (examining the 1998 amendments to the 1906 Indonesian Bankruptcy Code).

42. See Hornick, *supra* note 24, at 24 (explaining the effect of an adjudication of bankrupt in the case of a general creditor). In the event the judicially-determined bankrupt debtor has secured creditors, the secured creditors' claims are preserved despite the bankrupt adjudication. *Id.*; see also Achmadi & Trommel, *supra* note 24 (adding that pursuant to an adjudication of bankruptcy, a company-debtor loses the right to use its assets for its benefit or to engage in any other legal act).

43. See Hornick, *supra* note 24, at 24 (explaining the procedure through which a bankruptcy was carried out under the 1906 law).

44. See *id.* (providing a discussion of the appeal process following an adjudication of bankrupt and the effect of such an appeal).

45. See *id.* at 25 (specifying the verification meeting may not transpire until fourteen days after the deadline for filing creditors' claims); see also Achmadi & Trommel, *supra* note 24 (clarifying submission for verification is a prerequisite for payment if the creditor is a general creditor).

46. See BLACK'S LAW DICTIONARY 1355 (6th ed. 1990) (defining "Secured claims" as claims that are guaranteed to be paid as a result of a security interest the creditor holds, such as a lien or other financial collateral). *Id.* Such claims are only guaranteed to be paid up to the value of the security interest held by the creditor.

preferred,⁴⁷ or general,⁴⁸ and whether or not any filed claims are being disputed.⁴⁹ At the meeting, the receiver may demand proof to substantiate a creditor's claim and negotiate with creditors while the creditors may dispute the validity of a claim or its amount.⁵⁰

Once a debtor is determined to be bankrupt, creditors with a secured interest may foreclose on the secured property if this action is initiated within sixty days.⁵¹ Alternatively, a secured creditor may redeem his financial interest through the liquidation of the debtor's estate, as initiated by the court-appointed bankruptcy receiver.⁵²

Creditors may also benefit by compelling the judge upon conclusion of the verification meeting to appoint a Creditors' Committee.⁵³ The Creditors' Committee acts to advise the receiver.⁵⁴ However, the receiver is compelled to provide the Creditors' Committee with all information sought and consult with the Committee before taking certain actions.⁵⁵ If the receiver rejects the Committee's proposal, the receiver is required to inform the Committee and the Committee may opt to appeal

47. See *id.* at 1178 (defining "Preferred claims" as those claims which have a superior right to payment over other claims). A preference may be obtained by a creditor numerous ways, including by perfecting a security interest or obtaining the right to payment first, e.g., by obtaining a first mortgage versus holding a second mortgage. *id.*

48. By deduction, "general claims" are claims that lack a security interest and preference. Such claims are the most typical and are the last to be paid. See *supra* notes 45-46 (defining secured and preferred claims).

49. See Hornick, *supra* note 24, at 25 (explaining disputed claims are determined by analyzing the debtor's books and comparing them with the filing of the creditors' claim).

50. See *id.* (adding that if a dispute arises pertaining to any of the submitted claims and a reconciliation cannot be obtained, the dispute is referred to the district court for a final determination); see also Achmadi & Trommel, *supra* note 24 (claiming the receiver has the authority to decide whether or not a specific claim will be admitted for purposes of payment from the liquidation of the debtor's estate).

51. See Hornick, *supra* note 24, at 24 (postulating "[a]s a practical matter, this is no longer a valuable right, because even in the absence of bankruptcy proceedings, the Indonesian courts routinely prevent lenders foreclosing on secured property on default"); see also Achmadi & Trommel, *supra* note 24 (expounding secured creditors' rights are preserved despite the bankruptcy adjudication and may "... exercise their rights as if there were no bankruptcy").

52. See Hornick, *supra* note 24, at 25 (noting that a creditor who does not utilize the option of foreclosing on secured property within sixty days of a bankruptcy adjudication preserves its interest in the secured property).

53. See *id.* at 25 (supplementing the judge's option to utilize a temporary Creditors' Committee through the verification meeting to aid in advising the receiver). Despite the fact that the Creditors' Committee is entitled to any requested information gathered by the receiver, the Creditors' Committee's influence is restricted to an advisory function. *Id.* If the receiver rejects the committee's recommendation, the receiver must notify the committee and the committee is allowed to appeal to the judge. *Id.* The judge's decision on the matter becomes the final resolution. *Id.* The Creditors' Committee is rarely used, most likely due to the lack of significant bankruptcies existing in Indonesia. *Id.*

54. See *id.* (discussing the role and function of the Creditors' Committee under the 1906 bankruptcy law).

55. See *id.* at 25 (listing the actions which require the receiver to first consult with the Creditors' Committee as: filing a claim on behalf of the bankrupt or pursuing an already existing claim; defending a claim against the bankrupt, except for disputed claims arising out of the verification meeting; continuing or discontinuing the bankrupt's business; and selling the bankrupt's assets).

to the judge.⁵⁶ Under the Indonesian Bankruptcy Act, up to three creditors' representatives are able to serve on a Creditors' Committee.⁵⁷

Conversely, a debtor may attempt to protect himself by offering a plan of composition at least eight days prior to the verification meeting.⁵⁸ A plan of composition is an agreement between the debtor and the general creditors to pay all or part of the debts.⁵⁹ Such a plan must be approved by a majority of the general creditors present at the verification meeting, as well as the district court.⁶⁰ Upon approval of the plan, the bankruptcy is canceled and the debtor's unsecured claims are satisfied to the extent of the composition agreement's terms.⁶¹

Once a debtor is adjudicated bankrupt, the receiver commences liquidation of the debtor's estate.⁶² Secured interests are given priority, in that all secured interests must be fully satisfied before proceeds from the liquidation may be made available to the other creditors.⁶³ Provided enough money was procured through the liquidation sale, remaining creditors are entitled to payment in proportion to their filed claims.⁶⁴

Despite these pro-creditor provisions, however, the Indonesian Bankruptcy Code has been deemed virtually useless.⁶⁵ Creditors seek collection of unpaid debts through mechanisms outside the legal system, utilizing negotiation and "dubious

56. See Hornick, *supra* note 24, at 26 (explaining that in the event of an appeal, the judge's decision is final).

57. See *id.* at 25 (augmenting more than three creditors are sometimes allowed to serve on the creditors committee).

58. See *id.* (mentioning the receiver also has the option to offer a plan of composition at any time if authorized by the judge).

59. See *id.* (setting forth the function and requirements of a plan of composition under the 1906 Indonesian Bankruptcy Code).

60. See *id.* (providing the formalities of pursuing a plan of composition as means of protection for the debtor and avoiding the vulnerability that accompanies submission to adjudication by a judge under the 1906 Indonesian insolvency law).

61. See *id.* (relating the effect of approval of a plan of composition by a majority of a debtor's creditors and the District Court).

62. See *id.* at 26 (explaining the liquidation sale may transpire in the form of a public auction or by private sale).

63. See *id.* at 26 (recognizing the receiver will create and issue a Schedule of Distribution reflecting the amount of money collected from the liquidation and what the respective distributions will be). Secured creditors are given priority, in that their secured debts must be fully satisfied before general creditors may receive payment. *Id.* General creditors receive pro rata apportionment from any money generated as a result of the receiver managing a company-debtor's business, as well as the liquidation of the debtor's estate. *Id.* This parallels the system employed by the U.S. Bankruptcy Code.

64. See *id.* (adding the 1906 insolvency law allows creditors to "set off" the amount owed by the debtor by any amount owed by the creditor to the debtor).

65. See generally *Indonesia's Bankruptcy Court Opens*, XINHUA NEWS AGENCY, Aug. 21, 1998 (explaining the law gives creditors little leverage over debtors); see generally *Indonesia Bankruptcy Law-2: Avoid Bentoel Scenarios*, *supra* note 41 (proclaiming the law's complexity discourages creditors from utilizing it); see generally Kate Linebaugh, *Bk Intl Indonesia, BNI File Bankruptcy Process vs Ometraco*, DOW JONES NEWS SERVICE, Sept. 11, 1998 (recognizing there are few remedies available to creditors to employ over debtors who refuse to pay their debts). *But cf.* Achmadi & Trommel, *supra* note 24 (arguing the problem is not the law, but the inefficient administration of justice).

debt collection practices that wouldn't be acceptable elsewhere."⁶⁶ In addition, creditors who do utilize the bankruptcy proceeding find themselves in the court system for years before, if ever, benefitting from a remedy.⁶⁷ Complicating the situation, the Indonesian judiciary operates under a corrupt reputation, where the party who offers the judge the most money comes out as the winner.⁶⁸ Consequently, insolvent companies in Indonesia are able to escape liquidation and continue operating for many years, leaving the creditor unpaid and virtually without a remedy.⁶⁹ Furthermore, companies have not exercised the option to seek suspension of payments⁷⁰ and few instances exist in which the judiciary has adjudicated a company to be bankrupt.⁷¹

66. *Indonesia Bankruptcy Law-2: Avoid Bentoel Scenarios*, *supra* note 41; *see also* Timothy B. DeSeino, *The "Asian Contagion: Understanding Cultural and Legal Differences*, 1998 AM. BANKR INST. J. LEXIS 157, 5-6 (Ronald J. Silverman ed., Hebb & Gitlin P.C.) (1998) (adding Indonesia lacks an organized informal mechanism through which debtors can attempt to reach an amicable solution with their creditors); *see also* Grainne McCarthy, *Indonesia Bankruptcy Law Seen Struggle Against Corruption*, DOW JONES NEWS SERVICE, Jul. 31, 1998 (asserting under the 1906 insolvency law, "justice" depends on who pays the judge the most amount of money); *see also* Sander Thoenes, *Law Set to Push Indonesian Debtors Over the Edge: Tougher Measures May Force Companies to Face Up to Bankruptcy*, LONDON FIN. TIMES, Aug. 20, 1998, at 6 (recognizing that unless judges are paid more, "... the bankruptcy system could become victim of the common practice of settling matters through the highest bribe").

67. *See* DeSeino, *supra* note 66, at 6 (explaining the hiding of assets is an ordinary practice in Indonesia due to the lack of a formal registration system for Indonesian companies); *see also* *Indonesia Bankruptcy Law-2: Avoid Bentoel Scenarios*, *supra* note 41 (highlighting an instance in which the creditors of a bankrupt Indonesian company waited six years for an adjudication and was finally settled); *see generally* RI 'Lacks Experts for New Bankruptcy Law,' *supra* note 41 (verifying the reality under the 1906 bankruptcy law was that the judiciary did not adjudicate the debtor's status quickly).

68. *See* McCarthy, *supra* note 66 (asserting under the 1906 insolvency law, "justice" depends on who pays the judge the most amount of money); *see also* *Indonesia Bankruptcy Law-2: Avoid Bentoel Scenarios*, *supra* note 41 (characterizing the judicial system as corrupt and, consequently, prevents the utilization of the bankruptcy law); *see also* Thoenes, *supra* note 66 (recognizing that unless judges are paid more, "... the bankruptcy system could become victim of the common practice of settling matters through the highest bribe").

69. *See* *Indonesia Bankruptcy Law-2: Avoid Bentoel Scenarios*, *supra* note 41 (illustrating the lack of judicial action through the elucidation of creditors who waited six years for an adjudication and finally settled with the debtor); *see also* *Indonesia's Bankruptcy Court Opens*, *supra* note 65 (asserting the 1906 insolvency law was not utilized due to the lack of leverage it provided creditors with, which consequently enabled insolvent companies to continue transacting business); *see also* Linebaugh, *supra* note 65 (implying the 1906 insolvency law was not utilized because there was no remedy available to creditors and, thus, allowed insolvent debtors to continue functioning).

70. *See* *Indonesia Bankruptcy Law-2: Avoid Bentoel Scenarios*, *supra* note 41.

71. *See* Achmadi & Trommel, *supra* note 24 (determining this is due to Indonesia's cultural tendency to avoid confrontation, as well as the inefficient judiciary); *see also* *Indonesia's Bankruptcy Court Opens*, *supra* note 65 (finding the bankruptcy law is not utilized because it provides limited leverage over debtors).

B. *The Asian Financial Crisis and the Deterioration of the Indonesian Economy*

Until mid-1997, economists viewed Indonesia as one of the top emerging economies.⁷² Indonesia enjoyed three decades of stable growth, with real gross domestic product averaging over seven percent per year.⁷³ In fact, Indonesia's gross domestic product per capita exceeded the United States; it enjoyed a stable rupiah,⁷⁴ and Indonesia reported inflation in single digits.⁷⁵ But in 1997, the Asian financial crisis began to surface in Indonesia⁷⁶ and the growth came to a halt.⁷⁷

The crisis originated in Thailand due to the country's high foreign debt and weak financial system. Eventually, this resulted in the devaluation of Thailand's baht.⁷⁸ Concern over the depreciation of the baht created a heightened scrutiny of other Asian economies in order to determine their respective economic viability.⁷⁹ Consequently, the problems in Indonesia's financial market also came under examination.⁸⁰ Specifically, Indonesian banks had engaged in heavy borrowing and also extended loans to domestic companies that were simultaneously financially extended to foreign creditors.⁸¹ Accordingly, the Indonesian rupiah experienced the same devaluation as the baht.⁸² By the end of October 1997, the rupiah had dropped

72. See *Economic Trends and Outlook*, *supra* note 1 (providing data demonstrating the economic strength of the Indonesian economy preceding the Asian financial crisis); see also *1997-98 in Indonesia*, *supra* note 1 (reviewing the economic strength of the Indonesian economy prior to the Asian financial crisis).

73. See *Economic Trends and Outlook*, *supra* note 1 (adding this exceeded the United States).

74. The rupiah is the currency of Indonesia.

75. See *Economic Trends and Outlook*, *supra* note 1 (highlighting the Indonesian economy preceding the Asian financial crisis).

76. See John W. Head, *Lessons from the Asian Financial Crisis: The Role of the IMF and the U.S.*, 7 KAN. J.L. & PUB. POL'Y 70, 71 (1998) (stating the crisis first emerged in Thailand in July, 1997, moved into Indonesia in October, 1997, and finally hit Korea in November, 1997).

77. See *Economic Trends and Outlook*, *supra* note 1 (describing the severe economic predicament Indonesia has experienced as a result of the Asian financial crisis); see generally Riyadi, *RI Economy in Deep Water, and It's Sink or Swim Time*, JAKARTA POST, Dec. 23, 1998 (identifying the domino effect of the devaluation of the rupiah as ultimately increasing poverty throughout Indonesia).

78. See Head, *supra* note 76, at 71 (providing a history of how the Asian financial crisis originated and spread throughout the region); see also Pate & Andrews, *supra* note 5, at 20 (describing the conception of the Asian financial crisis and its spreading); see generally Krider, *supra* note 2, at 430 (adding Thailand's stock market also collapsed). The baht is Thailand's currency.

79. See Head, *supra* note 76, at 72 (explaining how the Asian financial crisis infiltrated Indonesia); see also Pate & Andrews, *supra* note 5, at 20 (examining the spread of the Asian financial crisis into Indonesia).

80. See Head, *supra* note 76, at 72 (remarking that the banking industry was specifically examined); see also Krider, *supra* note 2, at 431 (attributing the collapse of the financial sector to the lack of regulation of the Indonesian banking industry).

81. See Head, note 75, at 72 (pinpointing the initial cause of the devaluation of the rupiah, as well as the deterioration of the Indonesian economy); see also *1997-98 In Indonesia*, *supra* note 1 (arguing private debt to foreign creditors is most responsible for the distressed financial predicament of Indonesia); see also Krider, *supra* note 2, at 431 (elaborating on how the Indonesian banking industry significantly attributed to the collapse of the economy).

82. See Head, *supra* note 76, at 72 (providing the series of events that led to the devaluation of the baht and, subsequently the rupiah); see also John J. Brandon, *Asian Crisis and Change*, CHRISTIAN SCI. MONITOR, July 1, 1998 (adding that Thailand's baht suffered a total devaluation of sixty percent).

in value by thirty-five percent,⁸³ and by January 1998, the rupiah had lost a total of eighty-five percent of its value.⁸⁴ As of mid-1998, the Indonesian economy continued to deteriorate as Indonesian corporations found themselves unable to pay domestic or foreign debts.⁸⁵ Consequently, domestic banks found themselves financially stressed, and foreign banks became unwilling to extend any more money to the country.

To date, the economic condition of Indonesia is poor. Economic forecasters predict gross domestic product will drop between thirteen and twenty-five percent for 1998.⁸⁶ Gross domestic product per capita declined more than half of what it had been in previous years.⁸⁷ Inflation also skyrocketed up to eighty percent, and the value of the rupiah continued to fall.⁸⁸ Furthermore, Indonesia's total foreign debt is estimated at US\$140 billion: US\$73 billion is debt held by private institutions, while the government owes US\$66 billion.⁸⁹ It is surmised that most of the private foreign debt is in default,⁹⁰ while thirty to seventy-five percent of banks' loans are, or soon will be, in default.⁹¹

The practical effect of the devaluation of the rupiah is that the value of the debt owed by Indonesian companies has tripled, while simultaneously decreasing the

83. See Head, *supra* note 76, at 72 (delineating the impact of the Asian financial crisis on Indonesia).

84. See Krider, *supra* note 2, at 431 (computing the value of the rupiah by comparing it against the U.S. dollar).

85. See *1997-98 In Indonesia*, *supra* note 1 (describing the initial interest of foreign creditors in Indonesia's growing economy and then quick withdrawal upon the devaluation of the rupiah as the source of Indonesia's falling economy).

86. See *Economic Trends and Outlook*, *supra* note 1 (setting forth several weaknesses with which the Indonesian economy must contend); see also Jason Tedjasukmana, *International Business; Reorganization of Debts is Urged for Indonesians*, N.Y. TIMES, Nov. 3, 1998, at C2 (claiming the IMF predicts the gross domestic product for 1998 to drop fifteen percent from 1997); see also *Yearender: Asian Economies Seek Recovery Through Reforms*, XINHUA NEWS AGENCY, Dec. 27, 1998 (asserting the Indonesian government predicts a fourteen percent decline in the gross domestic product for 1998, as compared to the six percent increase the preceding year).

87. See *Economic Trends and Outlook*, *supra* note 1 (describing the severe economic predicament Indonesia has experienced as a result of the Asian financial crisis).

88. See *id.* (outlining the economic hurdles Indonesia must undertake in order to recuperate from the Asian financial crisis).

89. See *id.* But see Tedjasukmana, *supra* note 86 (asserting US\$67 billion of the countries foreign debt is owed by corporations). Although the statistics seem consistent with regard to the country's total amount of foreign debt, the same is not true for how much of the foreign debt was accrued by the government and how much accrued by corporations.

90. See *Indonesian Foreign Debt 131.67 billion Dollars at End February*, AGENCE FR. PRESSE, May 14, 1998, at Int'l News (discussing the amount of debt Indonesia has and what the potential implications of this debt will be).

91. See *Hong Kong: Indonesian Banking System Largely Insolvent*, MALAY. NAT'L NEWS AGENCY, May 27, 1998 (showing the threatening insolvency of the Indonesian banking industry).

value of assets.⁹² Consequently, approximately eighty percent of the country's companies are rendered functionally bankrupt.⁹³

C. The IMF's Bailout Package

The continuing decline of the Indonesian economy eventually resulted in the government requesting aid from the IMF.⁹⁴ Originally, the IMF was formed to facilitate foreign currency exchange with the hope of bolstering international trade and global economic growth and stability.⁹⁵ Within the last two decades, however, the IMF has increasingly engaged in lending functions.⁹⁶

To become a member within the IMF, a country must submit an initial quota,⁹⁷ refrain from imposing foreign currency exchange restrictions, and disclose intentions pertaining to monetary and fiscal policies.⁹⁸ In return, member-countries

92. See *Kadin Urges Foreign Creditors to be Forgiving*, JAKARTA POST, Oct. 5, 1998, at 11 (exploring the futility of negotiations between debtors and creditors and arguing that writing-off these debts is the only feasible solution); see also *Creditors Insist Debtors Sell Noncore Businesses*, JAKARTA POST, Nov. 4, 1998, at News (presenting the difficulties associated with selling assets valued so low as a result of the devaluation of the rupiah); see also Reiner S., *Agreement Between Debtors and Creditors Still Far Off*, JAKARTA POST, Nov. 3, 1998 (demonstrating the low value of assets presents an obstacle to negotiations); see generally Vikram Khanna, *Indon Corporate Debt: Time to End Pantomime*, SING. BUS. TIMES, Aug. 24, 1998, at 6 (expounding how the devaluation of the rupiah has impacted the value of assets).

93. See *Econit: 80% F Businesses of Indonesia Conglomerates Face Bankruptcy*, INDON. NAT'L NEWS AGENCY, June 8, 1998 (examining the economic health of the Indonesian corporate sector); see also *Asian Chemical News: Indonesia: Hanging on the Rupiah*, CHEMICAL BUS. NEWSBASE, Aug. 21, 1998 (looking specifically at the chemical and petrochemical industries in Indonesia); see also Tjedasukmana, *supra* note 86 (asserting the decline of the country's economy resulted in mass bankruptcy among corporations); see also Chris Watch, *Indonesia Corporate Debt: Time to End Pantomime*, SING. BUS. TIMES, Aug. 24, 1998, at 6 (explaining the majority of debt procured by Indonesian companies occurred when the rupiah was worth five times more than currently).

94. See Head, *supra* note 76, at 72 (providing a brief history of how the Asian financial crisis infiltrated Indonesia); see also *Economic Trends and Outlook*, *supra* note 1 (discussing the economic impact the Asian financial crisis had on Indonesia).

95. See Pate & Andrews, *supra* note 5, at 20 (commenting that the inception of the IMF occurred during the Great Depression when a gold shortfall prompted many nations to quit utilizing the gold standard and subsequently suppressed foreign currency exchange among those countries); see also Claudio Grossman & Daniel D. Bradlow, *Are We Being Propelled Towards a People-Centered Transnational Legal Order?*, 9 AM. U.J. INT'L L. & POL'Y 1, 2-3 (1993) (suggesting the IMF was formed with one of its goals being to be able to pierce the sovereignty of member states with the larger objective of an international monetary order in mind); see also Cynthia C. Lichtenstein, *Dealing With Sovereign Liquidity Crises: New International Initiatives for the New World of Volatile Capital Flows To and From Emerging Markets*, 29 MCGEORGE L. REV. 807, 807 (1998) (claiming the IMF inception occurred in 1944 at Bretton Woods, New Hampshire).

96. See Pate & Andrews, *supra* note 5, at 20 (explaining the lending function of the IMF is popularly believed to be its primary function).

97. See *id.* (adding there is approximately US\$200 billion in the fund available to member-countries for loans). The United States has the largest quota, contributing around eighteen percent of the fund. *Id.* Consequently, this can give the United States a veto over significant issues. *Id.*

98. See *id.* (emphasizing "... the IMF has no inherent authority over a member's policies").

may choose their preferred method of exchange valuation.⁹⁹ The IMF monitors each member-country's actions, as well as their ability to repay foreign debt.¹⁰⁰

It is from the lending function that the IMF acquires its real power over the members by using the funds available for lending purposes to influence members' monetary and financial policies.¹⁰¹ Specifically, the IMF requires the member-country wanting to borrow money to submit a plan that delineates a pragmatic strategy that will resolve the problems causing the deficiency of funds, as well as the repayment of the loan.¹⁰² The fundamental elements of these plans must cover topics including performance measures,¹⁰³ emergency action,¹⁰⁴ financial sector

99. See *id.* at 20 (discussing the membership requirements of the IMF); see also *1997-98 In Indonesia, supra* note 1 (noting Indonesia has earned the reputation of maintaining a "prudent monetary policy"); see also Grossman & Bradlow, *supra* note 95, at 3 (implying that the only limitation infringed upon the member states' currency exchange method was that it be convertible without hindrance).

100. See Pate & Andrews, *supra* note 5, at 20 (defining the role of the IMF in overseeing the activities of its members).

101. *Id.* (stating the IMF lends money to those members who are temporarily unable to supply foreign currency exchanged needed to satisfy foreign debts); see also Grossman & Bradlow, *supra* note 95, at 5 (asserting the member states relinquished a portion of their control over monetary policies upon joining the IMF in exchange for the enjoyment of certain benefits, such as financial support in times of need). The IMF will also loan money to members whose economies are suffering by enlisting the financial help from other sources, such as the World Bank. See Pate & Andrews, *supra* note 5, at 20. But see *Testimony January 27, 1999 Honorable Lawrence H. Summers Deputy Secretary of the Treasury Senate Foreign Relations International Economic Policy, Export and Trade Promotion International Monetary Fund, Global Financing Crisis*, FED. DOCUMENT CLEARING HOUSE CONG. TESTIMONY, Jan. 27, 1999, at Capital Hill Hearing Testimony (asserting the IMF has no authority to enforce any policy changes promised in exchange for loans).

102. See Pate & Andrews, *supra* note 5, at 20 (explaining the IMF's requirements for loaning money to its financially-troubled members); see also Head, *supra* note 76, at 70 (stating the IMF only lends monetary support to countries complying with the policies sought by the IMF); see also Krider, *supra* note 2, at 433 (asserting the IMF required Indonesia to engage in reforming the financial and corporate sectors in exchange for monetary support); see generally *1997-98 In Indonesia, supra* note 1 (reflecting the monetary support provided by the IMF was in reaction to the economic reformation instituted by Indonesia).

103. See Pate & Andrews, *supra* note 5, at 21 (explaining the IMF utilizes macroeconomic measures to determine the success of reform plans). Among the measures the IMF looks at are inflation rates, growth in gross domestic product, and the current size of the foreign currency exchange account with the IMF. *Id.* at 20. In 1997 the Indonesian government made a fatal decision when it decided to allow the rupiah to float in an effort to maintain the currency exchange rate. See *1997-98 In Indonesia, supra* note 1. Subsequently, inflation occurred in response to the devaluation of the rupiah, as well as massive liquidity additions into the banking system. *Id.* Despite various efforts by the Indonesian government, the inflation rate has yet to be reduced. *Id.*

104. See Pate & Andrews, *supra* note 5, at 20 (noting the immediate objective of the reform plans is stabilization in the foreign currency exchange market, but this should be done by addressing the financial and corporate structural problems and not by raising interest rates).

reform,¹⁰⁵ corporate sector reform,¹⁰⁶ recessional impact,¹⁰⁷ and progress.¹⁰⁸ Only after submission of this plan will the IMF loan money.¹⁰⁹

Beginning in October 1997, Indonesia signed the first of several agreements with the IMF.¹¹⁰ Due to the numerous revisions to the original agreement, as well as the various subjects covered, “[t]he result is a complex, multi-faceted program to address macroeconomic imbalances, financial weaknesses, and the loss of private sector confidence.”¹¹¹ The agreement provides for economic policies and targets seven key areas, including monetary and interest rate policy, banking sector regulation, budgetary support for vulnerable groups of society, state enterprise reform and privatization, structural reform, corporate debt restructuring, and bankruptcy and judicial reform.¹¹²

The result of the agreement is a US\$40 billion bailout package arranged by the IMF.¹¹³ It is intended to restore confidence in the Indonesian economy by promoting

105. See *id.* (discussing the need to restructure the financial institutions includes a heightened focus on the country's banking system). The IMF will provide these institutions with technical assistance. *Id.* Additionally, in the context of the Asian Financial Crises, the governments of Korea, Thailand, and Indonesia created restructuring agencies with the autonomous power to liquidate those banks severely troubled and to restructure others, as well as to privatize some banks while merging others. *Id.* at 21. In Indonesia, the created restructuring agency is the Indonesian Bank Restructuring Agency (IBRA). *Id.*; see also Lichtenstein, *supra* note 95, at 812 (emphasizing the importance of financial sector reform and a domestic banking system to the prevention of an economic collapse, as well as maintaining a stable economy).

106. See Pate & Andrews, *supra* note 5, at 21 (expounding resolution relies on focusing on the underlying problems that exist in the way business traditionally has been conducted throughout the country). A common problem with the Asian countries was the lack of adequate information available to investors. Thus, these countries' plans focused on reconstructing disclosure, accounting, and auditing standards. *Id.* Additionally, of primary concern with the Asian countries was removing all existing obstacles preventing voluntary debt restructuring. *Id.* It is in this category that the focus fell onto Indonesia's bankruptcy law. *Id.*

107. See Pate & Andrews, *supra* note 5, at 21 (advocating the allowance of budget deficits in exchange for increased spending because such increased spending minimizes the impact of recession and improves the economy).

108. See *id.* (postulating progress requires leaders open to changes and dedicated to implementing reform). Since the commencement of the Asian financial crises, Thailand, Korea and Indonesia have all come under the power of new leaders. *Id.* Unlike the other two countries, however, Indonesia has continued to struggle even under new President Habibie's Administration. *Id.*

109. See Pate & Andrews, *supra* note 5, at 20 (reviewing the IMF's criteria for extending a loan to a financially-troubled member).

110. See *1997-98 In Indonesia*, *supra* note 1 (adding amendments to this agreement were signed on the following dates: January 15, 1998; April 10, 1998; June 24, 1998; and July 29, 1998).

111. *Id.*; see also *Structural Reforms Agreed with IMF*, TAX NEWS SERVICES, Apr. 30, 1998. On January 15, 1998, the IMF and Indonesia signed a Memorandum of Economic and Financial Policies establishing “a comprehensive strategy for stabilizing and reforming the Indonesian economy.” See *1997-98 In Indonesia*, *supra* note 1. Updates and modifications followed this in a Supplementary Memorandum. See *supra*, note 110 (providing the dates of the subsequent amendments to the Memorandum of Economic and Financial Policies).

112. See *Structural Reforms Agreed with IMF*, *supra* note 111 (outlining the economic reforms required pursuant to the Memorandum of Economic and Financial Policies signed by Indonesia and the IMF).

113. See Head, *supra* note 76 (explaining the sources of the funding include: US\$10 billion from the IMF, US\$4.5 billion from the World Bank, US\$3.5 billion from the Asian Development Bank, US\$5 billion from Japan, US\$5 billion from Singapore, US\$3 billion from the United States, US\$1 billion each from other Asian countries, and US\$5 billion in contingency reserves by Indonesia); see also *Economic Trends and Outlook*, *supra* note 1 (discussing the IMF's role in helping Indonesia restore its economy); see also Krider, *supra* note 2, at 427-33

monetary and fiscal policies, which are designed to restore confidence to financial markets.¹¹⁴ Further, the agreement restructures the financial sector by implementing measures to insure it remains sound.¹¹⁵ It also provides deregulation and trade reforms.¹¹⁶

In exchange for the money extended to Indonesia, Indonesia agreed to address the inadequacies of its economy,¹¹⁷ including the implementation of a new bankruptcy law.¹¹⁸ Specifically, the IMF established a deadline of August 20, 1998, for Indonesia to complete amendments to the bankruptcy law that are conducive to economic reform and recovery.¹¹⁹ A team comprised of experts from the IMF, the Cabinet Secretariat, the National Development Planning Board, and the Minister of Justice worked together to formulate a government decree of bankruptcy stipulations to substitute the Indonesian Bankruptcy Code.¹²⁰

The driving reason behind the revision of Indonesia's old and well-established bankruptcy law is that it was viewed as inadequate to remedy the country's

(considering the monetary support lent by the IMF in an effort to aid economically devastated Indonesia). It is expected that the total amount of money to be lent to the Asian countries will be approximately US\$118 billion. *Id.* at 433. This will be the largest bailout package ever provided by the IMF, surpassing the US\$48 billion dollar package given to Mexico in 1994. *Id.*

114. See Head, *supra* note 76, at 72 (providing the rationale behind the IMF bailout package devised on behalf of Indonesia); see also Bruce Clark et al., *Indonesia Reckons Cost of IMF Aid Package*, FIN. TIMES, Nov. 1, 1997, at 3 (describing the intent of the bailout package provided by the IMF); see also Pate & Andrews, *supra* note 5, at 20 (stating the IMF conditions monetary support upon the country engaging in restructuring reforms to insure a return to economic stability).

115. See Head, *supra* note 76, at 72 (discussing the motivation of the financial bailout package given to Indonesia by the IMF).

116. See *id.* (specifying how the IMF bailout package intended to insure the Indonesian economy would return to stability).

117. See *1997-98 In Indonesia*, *supra* note 1 (mentioning the continuous deterioration of Indonesia's economy resulted in subsequent revisions of the agreement). In October, 1997, Indonesia signed the first of a series letters of intent with the IMF providing for a three-year recovery program sponsored by the loans from the IMF. See *id.* Following this were several amendments to the original agreement. See *supra* note 110 (providing the dates of the amendments to the agreement with the IMF).

118. See *supra* note 106 and accompanying text (mentioning corporate sector reform under IMF); see also *1997-98 In Indonesia*, *supra* note 1 (explaining although the letter of intent signed in October, 1997 called for legislative reform, this became even more evident in the letter of intent submitted in January, 1998); see also *Economic Trends and Outlook*, *supra* note 1 (clarifying the agreement between Indonesia and the IMF was amended to address continuing problems within the Indonesian economy and the focus of the agreement was expanded to include reformation of the bankruptcy law); see also *Structural Reforms Agreed with IMF*, *supra* note 111 (outlining the various reforms Indonesia was expected to implement as a result of the Memorandum of Economic and Financial Policies signed by Indonesia and the IMF).

119. See *Bankruptcy, Foreclosure Laws May Miss Deadline*, THIAL. BUS. DAY, Oct. 9, 1998. Indonesia has met this deadline and the amendments to the bankruptcy law have been enacted and are currently being implemented. See *infra* notes 126-54 and accompanying text (discussing the enactment of the 1998 amendments to the Indonesian Bankruptcy Code and the commencement of operating the commercial court).

120. See *Indonesia: Muladi to Confer with House Factions on Socialization of Government Decree on Bankruptcy*, INDON. NAT'L NEWS AGENCY, Apr. 14, 1998 [hereinafter *Muladi to Confer with House Factions*] (observing the completion of the draft decree on bankruptcy).

suffering economy.¹²¹ Consequently, in August 1998, the new bankruptcy law was enacted.¹²²

III. THE INSOLVENCY REGULATIONS

The retirement of the original insolvency law did not result in the enactment of a single new law. Rather, Indonesia created a comprehensive package of three regulations: the amendments to the bankruptcy law,¹²³ the Jakarta Initiative,¹²⁴ and INDRA.¹²⁵ These regulations provide alternative means governing how debtors and creditors may deal with the financial plight of the Indonesian private sector and aid in the restoration of a stable Indonesian economy.

A. The Bankruptcy Proceedings

Due to the urgent need to provide an amended bankruptcy law conducive to economic reformation, the new regulations originally went into effect under a Presidential decree and were later presented to the House of Representatives for a vote.¹²⁶ The new regulations are aimed at eliminating inefficient companies while simultaneously restoring confidence in the Indonesian economy.¹²⁷ Aside from

121. See *Can Bankruptcy Law Solve Debt Problem?* JAKARTA POST, Oct. 19, 1998, at News (arguing it is not the bankruptcy law, but the Indonesian judiciary that needs reformation); see also *Indonesia's Bankruptcy Court Opens*, *supra* note 65 (mentioning the 190[6] law was not utilized because it failed to provide creditors with a remedy); see also *UPI Focus: Indonesia Launches a Bankruptcy Law*, U.P.I., Aug. 20, 1998 [hereinafter *UPI Focus*] (stating the 1906 insolvency law was seen as inadequate to cope with the current crisis of widespread insolvency throughout Indonesia); cf. Achmadi & Trommel, *supra* note 24 (asserting "[t]he real problem in Indonesia is not bad law, but the inefficient administration of justice"). According to a survey conducted by the American Bankruptcy Institute, a fundamental objective of any bankruptcy law should be to provide a "fresh start" for the debtor, or to maximize the amount of the debtor's assets distributed to the respective creditors. *Id.* Indonesia's original Bankruptcy Code had met this criteria, and, thus, should not necessarily have been discarded. *Id.*

122. See *infra* notes 126-54 and accompanying text (discussing the 1998 amendments to 1906 insolvency law, thus resulting in the creation of a new law).

123. See *infra* notes 126-54 and accompanying text.

124. See *infra* notes 155-98 and accompanying text (examining the provisions of the Jakarta Initiative).

125. See *infra* notes 199-206 and accompanying text (reviewing the function and requirements of INDRA).

126. See Christine T. Tjandraningsih, *Indonesia's Parliament Passes Bill on Bankruptcy Rules*, JAPAN ECON. NEWSWIRE, July 24, 1998 (adding President Suharto had signed the law on April 22, 1998); see also *House Passes New Bankruptcy Bill*, INDON. NAT'L NEWS AGENCY, July 24, 1998 [hereinafter *Indonesia: House Passes New Bankruptcy Bill*] (providing the framework for the creation and implementation of the 1998 amendments to 1906 Indonesian Bankruptcy Code); see also *Indonesia's Parliament Passes Bill on Bankruptcy Rules*, ASIAN ECON. NEWS, July 27, 1998 [hereinafter *Indonesia's Parliament Passes Bill on Bankruptcy Rules*] (exploring the strengths of the amendments to the insolvency law).

127. See *Indonesia's Bankruptcy Court Opens*, *supra* note 65 (providing a brief summary of the reasons behind enacting the 1998 amendments); see also Grainne McCarthy, *Indonesia Bankruptcy Law-3: Deluge of Cases Expected*, DOW JONES NEWS SERVICE, July 31, 1998 [hereinafter *Deluge of Cases Expected*] (highlighting the quick deadlines required under the 1998 amendments); see also *UPI Focus*, *supra* note 121 (noting the new law requires an adjudication of the debtor's status within thirty days of the filing of the petition). Under the new law, a debtor's

establishing the substantive aspects of bankruptcies, the new law created an original court specialized to handle the deluge of bankruptcies expected as a result of the Asian financial crisis.

1. The Commercial Court

The new regulations established a commercial court in Jakarta,¹²⁸ and it is expected that as implementation of the new regulations proceeds, more courts will be erected in Bandung, Semarang, Surabaya, and Medan.¹²⁹ The commercial court falls under the jurisdiction of a district court,¹³⁰ "which is the first level of the Indonesian court hierarchy."¹³¹

In expectation of the deluge of bankruptcy filings expected under the new regulations, forty-five judges specializing in commercial law were trained for the sole purpose of facilitating the new court and cases.¹³² Each case filed under the new regulations will be presided over by a panel of three magistrates.¹³³ If the panel delivers a verdict of bankrupt, a supervisory judge is appointed to oversee the

status must be adjudicated within sixty days. See *infra* notes 143-44, 147-48 and accompanying text (delineating the substantive aspects of the 1998 amendments to the 1906 Indonesian Bankruptcy Code). Alternatively, under a suspension of payments, the debtor has up to 270 days to formulate a repayment plan agreeable to the creditors. See *infra* notes 148-50 and accompanying text (discussing the suspension of payments alternative).

128. See *Indonesia Bankruptcy Law Comes Into Force; First Court Open*, DOW JONES NEWS SERVICE, Aug. 20, 1998 [hereinafter *First Court Open*] (explaining a total of seventeen judges will preside in this new court); see also *Indonesia Commercial Court to Be Operational Sept 1, No Cases Filed Yet*, AFXAP, Aug. 27, 1998 [hereinafter *Indonesia Commercial Court*] (providing the procedure through which a bankruptcy is to be adjudicated in the new commercial court under the 1998 amendments to the 1906 insolvency law); see also *Indonesia's Bankruptcy Court Opens*, *supra* note 65 (presenting the reasoning behind the establishment of a new court); see also *Indonesian Government Moves to Boost Private Sector*, DEUTSCHE PRESSE-AGENTUR, Aug. 20, 1998 (considering the new court and why it was created). This is comparable to the insolvency system utilized in the United States, in that the United States has granted exclusive jurisdiction to one court specialized to administer insolvency proceedings. See Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified at 11 U.S.C. §§ 101-151326 (Supp. IV 1980)).

129. See Benny S. Tabalujan, *Give Jakarta's Bankruptcy Law a Chance*, SING. BUS. TIMES, May 12, 1998 (describing the implementation of the recently created commercial court).

130. See *Indonesia: Muladi to Confer with House Factions*, *supra* note 120 (explaining the Indonesian judicial system recognizes four types of courts: district courts, military tribunals, religious courts and administrative courts). For administrative and judicial purposes, Indonesia is divided into twenty-seven provinces. See REYNOLDS & FLORES, *supra* note 24, at III5-6. These twenty-seven provinces are then divided into 246 districts. *Id.* In each district, there are fifty-five municipalities and state courts of first jurisdiction. *Id.* A court of appeal also exists in each of the twenty-seven districts. *Id.* The Supreme Court is located in Jakarta. *Id.* There are also religious courts for Islamic matters, which are parallel to the civil courts at the state level, and appeals are made to the religious high court. *Id.*

131. Tabalujan, *supra* note 129; see also *supra* note 130 (analyzing the structure of the Indonesian judiciary).

132. See *House Passes New Bankruptcy Bill*, *supra* note 126. Although, at the time of the commencement of the commercial court, only eighteen judges had completed the training and were ready to preside over cases. See *supra* notes 128-31 and accompanying text (discussing the opening of the commercial court).

133. See *Indonesia Commercial Court*, *supra* note 128 (establishing the procedure through which a bankruptcy will be adjudicated in the new commercial court under the 1998 amendments to the Indonesian Bankruptcy Code).

liquidation and distribution of the company's assets.¹³⁴ These supervisory judges survey the activities of the receivers.¹³⁵

The new commercial court only hears cases involving unsecured creditors, leaving secured creditors to continue seeking remedies from the traditional courts.¹³⁶ Furthermore, the new bankruptcy court is intended to be a court of last resort because proceedings should only be enacted against those debtors who are unwilling to cooperate in paying their debts despite their ability to do so, and against debtors who are acting in bad faith.¹³⁷ As such, the new law strives to force default debtors who have the means to pay their debts to negotiate with their creditors a repayment schedule, or in the case of those debtors unable to pay off their debts, to expedite the liquidation of the debtor's assets.¹³⁸

2. Procedure

Under the new law, bankruptcies appear to vary according to the individual circumstances and what actions the respective debtor and individual creditors decide to undertake. Specifically, the bankruptcy may result in liquidation of the debtor's estate or it may proceed under a suspension of payments.¹³⁹ The new law is full of technical deadlines, all of which are aimed at insuring the debtor's case is

134. *See id.* (adding the commercial court has seven supervisory judges).

135. *See id.* (noting the receivers must obtain the supervisory judge's permission to liquidate any of the debtors assets); *see also* Thoenes, *supra* note 66 (remarking these independent receivers replaced the state receiver agency that existed under the 1906 insolvency law); *see also* Tabalujan, *supra* note 129 (emphasizing the significance of this change as compared to the 1906 Indonesian Bankruptcy Code).

136. *See* Barry Porter, *Bankruptcy Court Offers Ray of Hope*, S. CHINA MORNING POST, Sept. 21, 1998, at 5; *cf.* Hornick, *supra* note 24, at 24 (explaining that under the original insolvency law the effect of an adjudication of bankruptcy yielded a lien over the debtors property) Additionally, in the case of secured creditors, a creditor may elect to liquidate the debtor's assets within sixty days of the debtor's filing for bankruptcy. *See id.* Note, the application of the new bankruptcy law only to general creditors is likely to have an immense impact on the utilization of the bankruptcy law for reasons discussed previously. *See supra* notes 65-71. Compare this exclusion of secured creditors from the jurisdiction of the commercial court to the U.S. Bankruptcy Court, which has exclusive jurisdiction of all insolvency matters. *See* U.S. CONST., art. I; *see also* Flics & Ireland, *supra* note 29, at 427.

137. *See Going Bankrupt*, JAKARTA POST, Oct. 17, 1998, at Opinion [hereinafter *Going Bankrupt*] (providing the intended purpose of the insolvency law pursuant to the 1998 amendments); *see also* Shoeb Kagda, *Banks Against Discounts on Indon Loan Repayments*, SING. BUS. TIMES, Nov. 3, 1998 (citing the statements of a vice-president of a bank, who claimed the use of the bankruptcy court was the "least attractive option").

138. *See Going Bankrupt*, *supra* note 137 (arguing only after the debtor has been offered the alternative of suspension of payments will a bankruptcy proceeding resume).

139. *See infra* notes 147, 152 and accompanying text (describing how a case might proceed under the 1998 amendments). This mirrors the general framework of the U.S. bankruptcy law, which allows for liquidation of the debtor pursuant to Chapter 7 and reorganization of the debtor's debts under, Chapter 11 or Chapter 13. *See* 11 U.S.C. §§ 101-151326; *see also* Flics & Ireland, *supra* note 29, at 426 (defining Chapter 7 liquidates the debtor in anticipation of distributing the assets to the debtor's creditors and, in the case of an entity, winding up the entity, whereas Chapter 11 reorganize the debtor, and in the case of an entity, the debtor retains control and management). In the United States, the bankruptcy law favors the reorganization that occurs under the Chapter 11 election. *Id.*

adjudicated quickly.¹⁴⁰ Furthermore, it provides a more neutral framework because safeguards exist for debtors and creditors alike.

The new regulations provide for several ways in which a bankruptcy proceeding can be commenced. First, a debtor with two or more creditors can be declared bankrupt by court order if the debtor has defaulted on at least one of the debts¹⁴¹ and at least two creditors file suit against the debtor.¹⁴² Either a creditor or the government can petition the court for such a ruling, and the regulation requires adjudication within thirty days of the filing of such an application.¹⁴³ In either event, the commercial court must first extend the option of suspension of payments to the debtor before an immediate adjudication can transpire.¹⁴⁴ Under the suspension of payments option, the debtor's payments to creditors are suspended while the debtor negotiates with the creditors a debt restructuring plan.¹⁴⁵ This option has inherent value to both the debtor and the creditors: the debtor is able to potentially avoid losing his business and the creditors are likely to receive more value for their debts.¹⁴⁶

The new regulation provides creditors protection in several ways. Most importantly, the new regulation provides creditors with a quick remedy for winding

140. See, e.g., McCarthy, *Deluge of Cases Expected*, *supra* note 127 (stating the debtor's status must be adjudicated within thirty days of the filing of the petition and limiting the appeals period to an additional thirty days).

141. See Undang-undang Kepailitan <http://www.geocities.com/CollegePark/Field/4492/Library/pailit_1.htm> (visited Feb. 21, 1990) (copy on file with *The Transnational Lawyer*) (providing a rough English translation of the Indonesian Bankruptcy Code as amended in 1998); see also *House Passes New Bankruptcy Bill*, *supra* note 126 (summarizing the requirements to file a petition for bankruptcy under the 1998 amendments); see McCarthy, *Deluge of Cases Expected*, *supra* note 127 (establishing the general provisions of the insolvency law pursuant to the 1998 amendments); see also Tjandraningsih, *supra* note 126 (explaining the technical provisions of the 1998 amendments to the Indonesian insolvency law).

142. See Undang-undang Kepeilitan, *supra* note 141 (supplying a rough English translation of the Indonesian Bankruptcy Code as amended in 1998), see also *House Passes New Bankruptcy Bill*, *supra* note 126 (stating the essential requirements for filing a petition under the 1998 amendments to the Indonesian Bankruptcy Code); see generally *Jakarta Court Rejects IFC Bankruptcy Claim Against Dharmala*, *ASIAN WALL ST. J.*, Dec. 8, 1998 (discussing the significance of this change and how it created confusion in a specific case when a creditor filed a petition against its debtor).

143. See, e.g., Tjandraningsih, *supra* note 126 (adding the appeals period is limited to an additional thirty days).

144. See *Going Bankrupt*, *supra* note 137 (arguing the 1998 amendments to the Indonesian Bankruptcy Code intended the commercial court to be a court of last resort). Under the suspension of payments option, the debtor has 270 days to present a plan for repayment of the debts that is acceptable to the creditors. See *infra* notes 147-50 and accompanying text (providing a substantive explanation of how the suspension of payments option transpires). Note, this is similar to the automatic stay that goes into effect upon the filing of a petition for bankruptcy, under any Chapter, in the United States. See 11 U.S.C. § 362; see also Flics & Ireland, *supra* note 29, at 426 (explaining the automatic stay protects debtors from all creditors from taking any action against the debtor).

145. See *Going Bankrupt*, *supra* note 137 (discussing the positive impact of the suspension of payments alternative on debtors and creditors); see also Hornick, *supra* note 24, at 26 (explaining the same process under the title "moratorium").

146. See *Going Bankrupt*, *supra* note 137 (providing the rationale behind the requirement that the commercial court extend the suspension of payment option prior to proceeding with the bankruptcy proceeding).

up of a company within sixty days, including the appeal period.¹⁴⁷ If a debtor elects the suspension of payments option, the commercial court must hold a hearing within forty-five days to determine whether the suspension of payments should be extended to a total of 270 days.¹⁴⁸ If the 270 day period of suspension of payments is granted and the debtor and creditors fail to agree on a rescheduling plan, the commercial court must adjudicate the debtor as bankrupt.¹⁴⁹ Conversely, if an agreement is reached on the terms of the rescheduling of debt payments, the commercial court legalizes the terms of the agreement, making it binding on all parties.¹⁵⁰ Furthermore, a creditor or the state prosecutor can request the court to confiscate a bankrupt debtor's assets.¹⁵¹ Additionally, creditors can ask the court to nullify grants made by a debtor within the last twelve months if the debtor knew or should have known it would be detrimental to a creditor.¹⁵²

The new regulations also provide for debtor protection. Primarily, the new regulations allow for a nine-month suspension of payments period, enabling debtors to work with a receiver to formulate a plan of how to pay creditors.¹⁵³ A debtor who is unable to pay the loan repayments may receive a deferral from the court if the

147. See McCarthy, *Deluge of Cases Expected*, *supra* note 126 (specifying the adjudication of the debtor must transpire within thirty days of the filing of the petition and a limitation of thirty days is placed on appeals); see also Richard Borsuk & Michael Casey, *Jakarta Court for Bankruptcy Will Be Set Up*, *ASIAN WALL ST. J.*, Apr. 27, 1998, at 1 (adding that appeals may only be made to the Supreme Court on questions of law, excluding evidentiary matters and intermediate appellate courts from the appeals process). Compare this with the time frame under the 1906 Indonesia Bankruptcy Code. See *supra* notes 66-68 (arguing creditors found themselves in the court system for years without benefitting from a remedy).

148. See Riyadi & Aloysius Unditu, *Skeptics Unmoved by Commercial Court*, *JAKARTA POST*, Sept. 28, 1998 (adding the commercial court must adjudicate the debtor bankrupt at this hearing if half of the creditors reject the debtor's proposal for a 270 day suspension).

149. See *id.* (noting the debtor can be declared bankrupt prior to the expiration of the 270 day period if a creditor, supervising judge, or receiver request such an action). The commercial court may initiate such an action on its own if it determines that the debtor is causing loss to the creditors or if the debtor transferred assets without the receiver's permission. *Id.*

150. See Riyadi & Unditu, *supra* note 148 (explaining the procedural aspects and legal consequences of the suspension of payments option). The commercial court may reject the rescheduling plan agreed to by the debtor and creditors and declare the debtor bankrupt if the court finds the agreement is: 1) legally flawed, 2) acquired through manipulation or conspiracy among creditors, or 3) the debtor failed to pay the administrator's fee. *Id.* The administrator's fee is determined at the commercial court's discretion. *Id.*

151. See Tjandraningsih, *supra* note 126 (providing specific provisions under the 1998 amendments to the Indonesian Bankruptcy Code that provide expeditious actions); see also Borsuk & Casey, *supra* note 147 (clarifying a liquidation order will prevent the hiding of assets).

152. See Tjandraningsih, *supra* note 126 (demonstrating how the 1998 amendments provide creditors with prompt proceedings). Under the U.S. bankruptcy law, the bankruptcy court has the authority to void transfers of money or property of the debtor's estate if the transfer was not a legitimate transaction or violated another section of the bankruptcy code, e.g., payment on a pre-petition debt. See 11 U.S.C. § 502(d) (Supp. IV 1980). This is intended to prevent the debtor from shifting assets and to insure the highest apportionment of the debtor's estate to the respective creditors as possible. Furthermore, under the bankruptcy law in the United States, any payment on a legitimate debt before the distribution of the debtor's estate to all other creditors of equal priority, i.e., secured, will also be reversed in an effort to guarantee the equal treatment of all creditors similarly situated. *Id.* § 508(a).

153. See McCarthy, *Deluge of Cases Expected*, *supra* note 126 (highlighting the provisions supporters of the 1998 amendments find appealing).

debtor presents a proposal for settlement with the creditor, although the case must then be heard within forty-five days.¹⁵⁴

B. The Jakarta Initiative

The Jakarta Initiative is formed by the Indonesian government, banks, and other institutions¹⁵⁵ and was formed to provide debtors and creditors with a negotiating framework so that they may utilize the advantages of INDRA.¹⁵⁶ It formulates guidelines for debtors and creditors to negotiate, which are aimed at stimulating the restructuring and recovery of the Indonesian private sector.¹⁵⁷ The Jakarta Initiative is expected to establish a starting point for debt restructuring negotiations,¹⁵⁸ and the government views it as an integral aspect of economic recovery.¹⁵⁹

In order to facilitate the implementation of the Jakarta Initiative, the Indonesian government has established a task force,¹⁶⁰ which is to work in conjunction with a

154. See Tjandraningsih, *supra* note 126 (illustrating the 1998 amendments' equal treatment of debtors and creditors); see also Riyadi & Unditu, *supra* note 148 (delineating the provisions of the suspension of payments option under the 1998 amendments to the Indonesian Bankruptcy Code).

155. See *Indonesian Govt Not to Help Private Foreign Debt Repayment*, ASIA PULSE, Nov. 3, 1998, at Nationwide Financial News [hereinafter *Indonesian Govt*] (adding the World Bank is indicative of the type of other institutions involved in the formation).

156. See *Literature on Jakarta Initiative*, JAKARTA INITIATIVE TASK FORCE (1998) (clarifying the interaction of INDRA, the Jakarta Initiative, and the Bankruptcy Code as amended in 1998); see also *infra* notes 199-206 and accompanying text (examining INDRA).

157. See The Jakarta Initiative, Preamble (1998) (Indon.) (stating the Initiative's goals include a speedy corporate recovery, reduction of poverty, and generation of tax revenue); see also *Indonesia: "Jakarta Initiative" on Corporate Restructuring*, INT'L MARKET INSIGHT TRADE OPPORTUNITIES INQUIRIES, Sept. 10, 1998 [hereinafter *Indonesia: "Jakarta Initiative"*] (providing an overview of the Jakarta Initiative).

158. See *Will 'Jakarta Initiative' Succeed in its Daunting Purpose?*, JAKARTA POST, Sept. 23, 1998, at 5 [hereinafter *Will 'Jakarta Initiative' Succeed*] (expounding the general framework of the Jakarta Initiative).

159. See The Jakarta Initiative, Government Policy, (1998) (Indon.) (expounding that mutual agreement between creditors and debtors is imperative to a stabilization of the Indonesian economy); see also *Conference on Debt Begins*, JAKARTA POST, Nov. 3, 1998, at News [hereinafter *Conference on Debt Begins*] (emphasizing the importance of out-of-court settlements among debtors and creditors to restoring the Indonesian economy's health); see also *Indonesian Govt*, *supra* note 155 (referring to statements made by the Indonesian Coordinating Minister for Economy, Finance and Industry); see also *New Move on Debt*, JAKARTA POST, Sept. 11, 1998, at 4 [hereinafter *New Move on Debt*] (claiming creditors are more likely to receive payment pursuant to the Jakarta Initiative versus pursuing a remedy through bankruptcy); see also Henny Sender, *Indonesia's New Proposal Fails to Impress Its Creditors: Are Both Sides Still at an Impasse in Negotiations on Restructuring Private Sector's Foreign Debt*, ASIAN WALL ST. J., (stating the government fears economic recovery will be prevented if debtors are forced into bankruptcy and subsequently liquidate their assets).

160. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.). The Jakarta Initiative Task Force is established under the supervision of the Chairman of Indonesia Private-Sector Debt and is comprised of a team. *Id.* The duties of the Task Force include overseeing the expedition of out-of-court negotiations and provide referrals to the commercial court to either continue restructuring negotiations under a court-supervised process pursuant to the suspension of payments provision of the bankruptcy law, or to aid court rulings to adopt out-of-court settlements and binding all creditors pursuant thereto. *Id.*; see also Embassy of the United States of America, Jakarta, Indonesia <<http://www.usembassyjakarta.org/econ/imi-corpres.html>> (visited Jan. 11, 1999) (copy on file with *The Transnational Lawyer*) (summarizing the creation of the Task Force and listing its primary duties); see also *Indonesia: "Jakarta Initiative," supra* note 157 (noting the government of Indonesia has designated Capital

Corporate Restructuring Advisory Committee procuring members from the private sector.¹⁶¹ The Jakarta Initiative is legally non-binding and aims at facilitating out-of-court negotiations between the debtor and respective creditors.¹⁶² Because it is non-binding, debtors and creditors voluntarily agree to subject themselves to the guidelines of the Jakarta Initiative and to commence debt restructuring negotiations thereunder. The Jakarta Initiative is intended to provide parties, both foreign and domestic, with recourse before attempting a settlement under INDRA¹⁶³ and is meant to complement the new bankruptcy regulations.¹⁶⁴

The four key points of the Jakarta Initiative include the adoption of principles, the utilization of the Jakarta Initiative Task Force, regulatory changes, and a corporate restructuring advisory committee.¹⁶⁵

1. Adoption of Principles

As a means to facilitate the negotiations and insure the success of any settlement agreed on, the Jakarta Initiative calls for the implementation of various standards pertaining to such areas as organization and representation, role of senior management, standstill and interim financing, information, company restructuring, advisory report, negotiation of restructuring plan, pre-negotiated bankruptcy plans, and non-discrimination.¹⁶⁶ These standards were established with the thought and

Markets Supervisory Agency Chairman Jusuf Anwar to lead the Jakarta Initiative Task Force); *see also Will the 'Jakarta Initiative' Succeed*, *supra* note 158 (delineating the general provisions of the Jakarta Initiative).

161. *See Indonesia: "Jakarta Initiative," supra* note 157 (defining the Task Force under the Jakarta Initiative); *see also* Embassy of the United States, Jakarta, Indonesia, *supra* note 160 (synopsizing the announcement of the inception of the Jakarta Initiative and its Task Force); *see also Will the 'Jakarta Initiative,' supra* note 158 (adding IBRA and INDRA will also comprise the membership of the Committee).

162. *See* The Jakarta Initiative, Implementation (1998) (Indon.) (advocating expedited out-of-court negotiation is the optimal approach for obtaining settlements); *see also Indonesia: "Jakarta Initiative," supra* note 157 (providing a brief overview of the Jakarta Initiative); *see also New Move on Debt, supra* note 159 (implying despite the lack of legally enforceable results, the Jakarta Initiative should encourage creditors to utilize it because it provides an increased likelihood of recuperating payment on existing debts).

163. *See infra* notes 199-206 and accompanying text (discussing INDRA).

164. *See* The Jakarta Initiative, Implementation (1998) (Indon.) (specifying the Jakarta Initiative is intended to facilitate the utilization of INDRA); *see also Indonesia: Debts: Govt Launches Scheme to Help Out-of-Court Settlements*, INDON. NAT'L NEWS AGENCY, Sept. 10, 1998 (stating the Jakarta Initiative was devised to complement the Indonesian Bankruptcy Code, as amended in 1998, as well as the INDRA); *see also Indonesian Govt, supra* note 155 (implying the Jakarta Initiative, Indra, and the new bankruptcy legislation are intended to supplement one another in restoring the economy's health).

165. *See* The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (delineating the regulation); *see also Indonesia: "Jakarta Initiative," supra* note 157 (providing a brief overview of the provisions of the Jakarta Initiative); *see also Will 'Jakarta Initiative' Succeed, supra* note 158 (highlighting the main terms of the Jakarta Initiative).

166. *See infra* notes 168-87 and accompanying text (discussing the substance of each of these standards); *see also* The Jakarta Initiative, Four-Point Government Program (1998) (Indon.); *see also Indonesia: "Jakarta Initiative," supra* note 157 (including these standards as principles included within the Jakarta Initiative).

hope that each will contribute to facilitating the prompt recovery of the Indonesian economy.¹⁶⁷

a. Organization and Representation

Debtor-companies should employ the services of a financial advisor who has experience in corporate and debt restructuring.¹⁶⁸ Similarly, the creditors should form a committee that is representative of all the creditors for that respective debtor (the "Committee") and designate a chairperson, financial advisor and legal advisor, all of whom should also be experienced in corporate and debt restructuring.¹⁶⁹ While either the debtor or the creditors may commence the restructuring process, the debtor is to endure all costs incurred by the restructuring and negotiation process, unless otherwise agreed.¹⁷⁰ These guidelines will help insure that both the debtor and creditors are treated fairly, as well as guarantee the wisdom of any decisions made by the debtor and creditors pertaining to the corporate and debt restructuring of the debtor.

b. Critical Role of Senior Management

The Jakarta Initiative advocates how important it is that the debtors and their Committees involve their respective senior managers throughout the restructuring and negotiation process.¹⁷¹

167. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.); see also *Indonesia: "Jakarta Initiative," supra note 157* (emphasizing the principles of the Jakarta Initiative as a means towards negotiations among debtors and creditors with the ultimate result of restoring the Indonesian economy); see also *Will 'Jakarta Initiative' Succeed, supra note 160* (criticizing these principles within a skeptical discussion of whether debt negotiations under the Jakarta Initiative will aid economic recovery).

168. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (providing the requirements of debt negotiations among debtors and their respective creditors under the Jakarta Initiative); see also Embassy of the United States of America, Jakarta, Indonesia, *supra note 162* (delineating the provisions of the Jakarta Initiative); see also *Indonesia: "Jakarta Initiative," supra note 157* (considering the requirements debtors are to adhere to under the Jakarta Initiative); see also *Will 'Jakarta Initiative' Succeed, supra note 160* (noting the implementation of a financial advisor as prerequisite to debt restructuring negotiations pursuant to the Jakarta Initiative).

169. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (extending the substantive requirements of "Organization and Representation" under the Jakarta Initiative); see also *Indonesia: "Jakarta Initiative," supra note 157* (mentioning the need for a Creditors' Committee under the provisions set forth in the Jakarta Initiative).

170. See The Jakarta Initiative, Four-Point Government Program (1998)(Indon.) (presenting the procedure under which debt restructuring negotiations may commence under the regulation).

171. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (describing the role management is expected to have in the debt restructuring negotiations pursuant to the regulation); see also Embassy of the United States of America, Jakarta, Indonesia, *supra note 162* (listing the general elements of the Jakarta Initiative); see also *Indonesia: "Jakarta Initiative" on Corporate Restructuring, supra note 159* (stating the Jakarta Initiative advocates the involvement of the debtors' and creditors' management).

c. Standstill and Interim Financing

The utilization of standstill and interim financing will guarantee no detrimental action towards the debtor will be taken while the negotiations transpire. Under the Jakarta Initiative, all of the creditors of a debtor are encouraged to agree on a reasonable and finite period of time for a standstill, during which the debtor and creditors should mutually agree to abide by a set of rules.¹⁷² These rules are to govern what actions the debtor and the creditors are able to take while in the standstill period.¹⁷³ Furthermore, the Jakarta Initiative's Four-Point Program advocates to creditors to subordinate existing claims to any new credit extended to the debtor once the standstill period begins.¹⁷⁴ This will aid debtors in stimulating their business and, consequently, help insure the debtor's economic viability. Finally, creditors are encouraged to either provide the debtor with working capital during this interim period by extending new credit to the debtor or to yield to other creditors who are willing to do so.¹⁷⁵

d. Information

Contingent upon both the debtor and creditors signing a confidentiality agreement, the Jakarta Initiative calls for the debtor to tender current financial reports to the Committee.¹⁷⁶ By surrendering such information to the creditors, the debtor is enabling the creditors to make a financial assessment of the debtor's economic viability.

172. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (asserting the standards under which debt restructuring negotiations should transpire); see also Embassy of the United States of America, Jakarta, Indonesia, *supra* note 160 (providing a summary of the Jakarta Initiative); see also Indonesia: "Jakarta Initiative," *supra* note 157 (producing the requirements debtors and creditors are to abide by pertaining to "Standstill and Interim Financing").

173. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (explaining the expectations for debtors and creditors during the standstill period under the Jakarta Initiative); see also Indonesia: "Jakarta Initiative," *supra* note 157 (summarizing the standards to be adhered to by the debtors and creditors during the standstill period).

174. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (supplying the requirements of the Jakarta Initiative pertaining to the standstill period).

175. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (stipulating such financing should be contingent upon the debtor submitting financial reports reflecting satisfactory demonstration of the company's status and according to agreement between the debtor and creditor).

176. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (clarifying these reports should provide the Committee with comprehensive information according to internationally acceptable accounting standards); see also Embassy of the United States of America, Jakarta, Indonesia, *supra* note 160 (highlighting the major provisions of the Jakarta Initiative); see also Indonesia: "Jakarta Initiative," *supra* note 157 (stating a confidentiality agreement should be signed before debtors relinquish any financial information); see also Will 'Jakarta Initiative' Succeed, *supra* note 158 (asserting the "standstill" period is contingent upon complying with the informational requirements of the Jakarta Initiative).

e. Company Restructuring Plan

Under the Jakarta Initiative, the debtor is to devise a restructuring plan and then submit the plan to the Committee.¹⁷⁷ Aside from being consistent with the Jakarta Initiative's principles, the debtor's plan should reflect the debtor's business plan and assert financial forecasts.¹⁷⁸ The debtor's restructuring plan should consider the creditors' contractual priorities¹⁷⁹ and should be aimed at satisfying the debtor's debts to restore economic stability.

f. Committee's Advisory Report

The Committee's advisors are responsible for preparing an advisory report, which includes a review and analysis of the debtor's business operations and future prospects, as well as recommendations and conclusions as to the viability of the debtor, the debtor's ability to pay off debt, and the debtor's working capital requirements for continued existence.¹⁸⁰ In order to facilitate the preparation of this report, the debtor is to cooperate with the Committee's advisors by providing unencumbered access to the debtor's business and financial records.¹⁸¹

g. Negotiation of a Restructuring Plan

The debtor and the Committee are to enter into negotiations to create an appropriate restructuring plan for the debtor, using as a foundation for these negotiations the debtor's restructuring proposal and the Committee's advisory report.¹⁸² The resulting restructuring plan is to respect the creditors' previously

177. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (delineating the principles adopted by the Jakarta Initiative); see also Embassy of the United States of America, Jakarta, Indonesia, *supra* note 160 (reviewing the major facets of the Jakarta Initiative); see also Indonesia: "Jakarta Initiative," *supra* note 157 (outlining the general provisions of the Jakarta Initiative).

178. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (emphasizing the restructuring plan "should heed . . . creditors' contractual priorities, including collateral positions").

179. See *id.* (discussing the Jakarta Initiatives expectations of debtors in assembling their restructuring plan).

180. See *id.* (providing the criteria to be considered by the Creditors' Committee in assessing the economic status of the debtor).

181. See *id.* (supplying the Jakarta Initiative's view of expected cooperation from debtors in aiding creditors to continue negotiations); see also Embassy of the United States of America, Jakarta, Indonesia, *supra* note 160 (summarizing the principles adopted by the Jakarta Initiative).

182. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (establishing standards by which debtors and creditors are to negotiate debt restructuring); see also Embassy of the United States of America, Jakarta, Indonesia, *supra* note 160 (reviewing the terms of the Jakarta Initiative); see also Indonesia: "Jakarta Initiative," *supra* note 157 (adding the Creditors' Committee's report should also be utilized to facilitate debt restructuring negotiations).

existing contractual obligations, and the plan should not require any party to make any concessions.¹⁸³

h. Pre-Negotiated Bankruptcy Plans

Once the restructuring negotiations result in an agreed upon plan, "best efforts" are to be used to insure the plan is disbursed to all creditors whose rights will be affected by the implementation of the plan.¹⁸⁴ Submitting the negotiated plan to the bankruptcy commercial court may provide relief in the event unanimity among all of the debtor's creditors is unattainable.¹⁸⁵ If the commercial court approves the plan, the negotiated plan becomes binding upon all creditors, including those opposed to the negotiated plan's implementation.¹⁸⁶

i. Non-Discrimination

The Jakarta Initiative explicitly states all creditors, domestic and foreign, are to be treated equally.¹⁸⁷

2. The Jakarta Initiative Task Force

Under the supervision of the Chairman Indonesia Private-Sector Debt, a Jakarta Initiative Task Force (the "Task Force") is to be established.¹⁸⁸ The Task Force will

183. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (requiring the decision-making process to be governed by commercial considerations only).

184. See *id.* (determining how debt restructuring plans are to be implemented); see also Embassy of the United States of America, Jakarta, Indonesia, *supra* note 160 (reciting an overview of the general provisions of the Jakarta Initiative).

185. See Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (establishing the procedure for addressing disagreements among the debtor and creditors pertaining to the implementation of a negotiated debt restructuring plan); see also Indonesia: "Jakarta Initiative," *supra* note 157 (adding that relief may only be sought from the commercial court if the negotiated restructuring plan complies with the bankruptcy law as amended in 1998).

186. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (determining the rights of creditors and the enforceability of a plan once a determination is required by the commercial court due to a disagreement pertaining to the implementation of a negotiated restructuring plan).

187. See *id.*; see also Embassy of the United States of America, Jakarta, Indonesia, *supra* note 160 (providing a synopsis of the principles adopted by the Jakarta Initiative). Unfortunately, there seems to be a lack of commentary on whether or not there was a previously existing problem of discrimination towards foreign creditors. However, because the Jakarta Initiative explicitly addresses the issue in a separate section, it leads to the conclusion that such a problem must have existed. See Geoff Hiscock, *Grim Outlook for Debt Recovery*, AUSTRALLASIAN BUS. INTELLIGENCE, Aug. 5, 1998, at 26 (stating foreign creditors were at a disadvantage because the 1906 bankruptcy law was applied differently to foreign creditors and that many Australian companies cannot enforce secured debts held by Indonesian debtors). This makes sense when considered in conjunction with the existence of corruption throughout the judiciary. See *supra* notes 68-69 and accompanying text.

188. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (formulating the framework for the establishment of a Task Force under the Jakarta Initiative); see also Indonesia: "Jakarta Initiative," *supra* note 157 (mentioning the creation of the Task Force pursuant to the Jakarta Initiative).

be comprised of a team that is funded.¹⁸⁹ The Task Force is charged with the duties of overseeing the expedition of out-of-court negotiations and, where necessary, provide referrals to the bankruptcy commercial court to either continue restructuring negotiations under a court-supervised process pursuant to the suspension of payment clause of the bankruptcy law, or to aid court rulings to adopt out-of-court settlements and bind all creditors.¹⁹⁰

3. Regulatory Changes

Under the Jakarta Initiative, the Indonesian government will make necessary regulatory changes to insure the restructuring negotiations succeed.¹⁹¹ Additionally, the Government will be receptive to the recommendations of the Task Force regarding needed "legal, regulatory or administrative changes."¹⁹²

4. Corporate Restructuring Advisory Committee and Public Participation

The Task Force is also charged with the duty of forming a Corporate Restructuring Advisory Committee.¹⁹³ This Committee is to consist of members chosen from domestic and foreign banks, Indonesian companies and bondholders.¹⁹⁴ In order to maintain correlation with other governmental policies, a representative

189. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (addressing the implementation of a Task Force).

190. See *id.* (listing the duties the Task Force is expected to execute); see also Scott Brede, *A Connecticut Firm Jousts with the Jakarta Initiative*, CONNECTICUT L. TRIB., Oct. 26, 1998, at News (summarizing the role of the Task Force under the Jakarta Initiative); see also Embassy of the United States of America, Indonesia, Jakarta, *supra* note 160 (describing the role of the Task Force under the Jakarta Initiative); *Indonesia: "Jakarta Initiative," supra* note 157 (identifying the general activities the Task Force is to be involved in).

191. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (including a listing of the regulations undergoing restructuring at the time of the enactment of the Jakarta Initiative). The other regulations being restructured at the time of the enactment of the Jakarta Initiative include: (1) Re-evaluation of fixed assets; (2) Income tax on forgiven loans, or "haircuts;" (3) The use of foreign currency in financial reports; (4) Mergers; (5) Issuance of shares in different series of categories; (6) Capital increases without preemptive rights; (7) Repurchase of shares by issuers and public companies; (8) Rights issue, form and content of registration statements, and prospectuses for a rights issue; (9) Accounting for foreign currency transactions; and (10) Improvements in the exchange listing rules. The Jakarta Initiative, *Restructuring Measures Already Taken* (1998) (Indon.); see also *Indonesia: "Jakarta Initiative," supra* note 157 (noting the Jakarta Initiative provides for the government reforming any other necessary regulatory changes). But this is the extent to which the government is willing to be involved. See *infra* note 199 and accompanying text (discussing the government will only provide the legislative framework for negotiations and will not help the private sector by absorbing some of the debt, as this would only be reflected in an increase of taxes).

192. The Jakarta Initiative, Four-Point Government Program (1998) (Indon.).

193. See *id.* (construing the creation and duties of the Corporate Restructuring Advisory Committee); see also *Indonesia: "Jakarta Initiative," supra* note 157 (outlining the main principles enacted by the Jakarta Initiative).

194. See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (determining the composition of the Corporate Restructuring Advisory Committee; see also *Indonesia: "Jakarta Initiative," supra* note 157 (adding IBRA and INDRA are also to participate on the Committee).

from IBRA¹⁹⁵ and INDRA shall also be a member of the Committee.¹⁹⁶ The Corporate Restructuring Advisory Committee's role is to evaluate the effectiveness of the Jakarta Initiative and propose new approaches which assist in its implementation.¹⁹⁷ The Corporate Restructuring Advisory Committee is therefore required to meet on a regular basis and report to and consult with the Task Force. Furthermore, the Task Force will seek public participation by conferring with the legal and financial communities, as well as representatives of labor and consumer groups.¹⁹⁸

C. Indonesian Debt Restructuring Program

The Indonesian government maintains a desire to remain neutral.¹⁹⁹ This requires the government to limit the extent of its involvement in the salvation of the private sector's economic viability in establishing a legislative framework through which debtors and creditors can negotiate. Specifically, the government of Indonesia has only participated by passing and implementing the new bankruptcy law and the Jakarta Initiative. Pursuant to the terms set forth by the IMF in exchange for a loan, the Indonesian government founded INDRA.²⁰⁰

The Indonesian Debt Restructuring Program (INDRA) was instituted in August, 1998, to provide debtors with foreign currency at a pre-determined exchange rate²⁰¹

195. The IBRA is the Indonesian Bank Restructuring Agency. *See supra* note 105. As part of the plan submitted to the IMF in exchange for a loan, Indonesia created this agency. *See Pate & Andrews, supra* note 5, at 21. IBRA is a restructuring agency and has the autonomous power to liquidate those banks severely troubled and to restructure others, as well as to privatize some banks while merging others. *See id.* Pursuant to the formulation of IBRA, a total of ten insolvent banks were closed from April to August, 1998. *See Riyadi, supra* note 77. Subsequently, the Indonesian government decided to aid in the recapitalizing of undercapitalized banks as an alternative approach. *See id.*

196. The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (establishing the composition of the Committee); *see also Indonesia: "Jakarta Initiative," supra* note 157 (considering the establishment of the Corporate Restructuring Advisory Committee).

197. *See The Jakarta Initiative, Four-Point Government Program (1998) (Indon.)* (providing the duties of the Corporate Restructuring Advisory Committee under the Jakarta Initiative).

198. *See id.* (delineating how the Corporate Advisory Restructuring Committee is to execute its duties).

199. *See Indonesian Govt, supra* note 155 (stating "[p]rivate offshore debts must be settled without the involvement of the government"); *see also Indonesian Bailout of Private Debts to Burden Taxpayers: WB, ASIA PULSE*, Nov. 3, 1998, at Nationwide Financial News (asserting the government will not assume any of the debt on behalf of Indonesian debtors and that any settlements arrived at must be the result of negotiations between the debtor and the respective creditors).

200. *See supra* notes 94-122 and accompanying text (delineating the role of the IMF and the agreement given by Indonesia in exchange for monetary support).

201. *See Christine Tjandraningsih, Indonesia to Launch New Initiative to Solve Debt, JAPAN ECON. NEWSWIRE*, Sept. 9, 1998 (adding INDRA is the result of a private debt agreement devised in Frankfurt, Germany, in June 1998). The Bank Indonesia is responsible for the supervision of this government institution. *See id.*; *see also Creditors 'Keen to Renegotiate Debts,' THE JAKARTA POST*, Oct. 15, 1998, at 8 (discussing the issue of debtors and their respective creditors negotiating on debt restructuring); *see also New Move on Debt, supra* note 162 (suggesting the low value of the rupiah has served as a deterrent for utilization of INDRA).

in order to avoid the risk of any further devaluation of the rupiah.²⁰² INDRA is an Indonesian government plan intended to encourage foreign creditors to restructure the loans they hold with Indonesian debtors.²⁰³ It was implemented with encouragement from the IMF.²⁰⁴ In order to benefit from INDRA, debtors and creditors must agree to a debt restructuring plan covering an eight year pay-back period, including a three year grace period.²⁰⁵ An additional requirement is that debtors must register with INDRA by July 30, 1999.²⁰⁶

D. Other Regulations

Aside from the three broad areas in which the Indonesian government has enacted new legislation, many other regulations have been either revised or newly created in an effort to facilitate the restructuring of Indonesia's corporate sector.²⁰⁷

202. See Thoenes, *supra* note 66 (stating INDRA provides those debtors and creditors who can agree on an eight year rescheduling of debt with an assurance of protection against the risk of any further devaluation of the rupiah); cf. *New Move on Debt*, *supra* note 162 (suggesting the low value of the rupiah has served as a deterrent for utilization of INDRA).

203. See *supra* note 201 and accompanying text (expounding the inception of INDRA); see also Thoenes, *supra* note 66 (affirming the Indonesian government contrived INDRA in an effort to instigate negotiations between debtors and their respective creditors on rescheduling of debts).

204. See *supra* note 105 and accompanying text (discussing financial sector reform); see also Thoenes, *supra* note 66 (implying INDRA should have been more popular among debtors and creditors because of its backing by the IMF).

205. See *Companies Nearing Agreement on \$10b Debt Restructuring*, JAKARTA POST, Oct. 23, 1998 (explaining INDRA was launched by the Indonesian government in August, 1998, as a technique to aid insolvent debtors and their respective creditors); see also *supra* note 201-02 and accompanying text (providing the terms and purpose of INDRA); see also *Success of Foreign Debt Relief Hinges on Domestic Debt*, JAKARTA POST, Aug. 27, 1998 (adding that during the three-year grace period the debtor only pays interest and an insolvent debtor has yet to employ INDRA). Debtors and creditors who seek to employ INDRA must first agree on an eight-year rescheduling of debt plan and may utilize the Jakarta Initiative to do so. See *supra* notes 201-02 and accompanying text (scrutinizing the INDRA); see also *Literature on Jakarta Initiative*, *supra* note 156 (clarifying the interaction of the Jakarta Initiative with INDRA).

206. See *No Indonesian Co Has Joined Gov't Debt Settlement Program*, ASIA PULSE, Jan. 29, 1999, at Nationwide Financial News (claiming as of January 29, 1999, not one debtor had registered with INDRA and that the registration deadline will not be extended); see also *Indonesian Debt Agency Sets Exchange Rate at Rp7, 815/US\$1*, ASIA PULSE, Feb. 4, 1999 (asserting many debtors are expressing interest in INDRA).

207. See *supra* note 191 and accompanying text; see also The Jakarta Initiative, Four-Point Government Program (1998) (Indon.) (describing the regulations involving re-evaluation of fixed assets, income tax on forgiven loans, use of foreign currency in financial reports, mergers, issuance of shares in different series of categories, capital increases without preemptive rights, repurchase of shares by issuers and public companies, rights issue, accounting for foreign currency transactions, and improvements in the exchange listing rules); see generally *1997-98 in Indonesia*, *supra* note 1 (mentioning expected reform addressing the banking industry); see generally Faith Keenan et al., *Banking: Last Resort*, FAR E. ECON. REV., Dec. 17, 1998, at Business (exploring the problems encountered in the efforts to reform the Indonesian banking industry); see generally Krider, *supra* note 2 (discussing mutual funds and the need for Indonesian legislative reform on transparency); see generally Arshad A. Ahmed, Comment, *Introducing Asset Securitization to Indonesia: A Method In Madness*, 19 U. PA. J. INT'L ECON. L. 823 (1998) (evaluating the enactment of an asset securitization law in response to the Asian financial crisis); see generally Lichtenstein, *supra* note 95 (exploring the correlation between the bank regulatory structure and the currency crises in emerging markets).

IV. IMPLEMENTATION

Due to the recent enactment of these regulations, implementation remains hazy. It appears as though all who are involved, the debtors, creditors and the government, are acting with uncertainty and are unsure what will ultimately happen. To complicate the situation further, everyone has a different idea of how this predicament should be handled.²⁰⁸ With this, two consistent attitudes strongly permeate every aspect of this transitory period: the government wants to remain uninvolved²⁰⁹ and both the debtors and creditors are wary and suspicious of the judiciary.²¹⁰

A. The Bankruptcy Proceedings

To date, utilization of the new bankruptcy law has been infrequent. Although one reason cannot be ascertained to explain this, several theories exist which confer validation.

First and foremost, those who would employ the new bankruptcy law have admitted to being hesitant towards the new court.²¹¹ Prior to the enactment of the new law, the Indonesian judiciary suffered from a reputation of corruption.²¹²

208. See *World Bank Takes Dim View of IMF Measures*, STAR TRIB., Dec. 3, 1998, at 1D (reporting the World Bank believes the IMF and the United States fumbled the initial handling of the Asian financial crisis and points out the continuing debate of whether their decisions furthered the impact of the crisis). The IMF chose not to issue a statement regarding the World Bank's findings, but has been cited as validating portions of the report. *Id.* However, the IMF claims its decision to effect raising interest rates in Thailand, Indonesia, and South Korea was the right choice and has been effective. *Id.*; see also *Creditors Insist Debtors Sell Noncore Businesses*, *supra* note 92 (demonstrating how creditors are demanding debtors illustrate their ability to generate cashflow before entering into debt restructuring negotiations); see also Kagda, *supra* note 137 (highlighting the adverse opinions on whether banks should provide debt write-offs for their debtors); see also Sanger, *supra* note 15 (providing a summary of a report prepared by the World Bank which concludes the IMF and United States made several "misjudgments" which had severe consequences for the Asian countries); see also David E. Sanger, *World Bank Beats Breast for Failures in Indonesia*, N.Y. TIMES, Feb. 11, 1999, at A14 (highlighting the adverse views of the IMF and World Bank versus those of the Indonesian government); cf. *International Reports: Indonesia, World Bank Gives Approval*, NAT'L L.J., Nov. 16, 1998, at A14 (asserting the World Bank's approval of the implementation and effectiveness of the 1998 amendments to the Indonesian Bankruptcy Code).

209. See *supra* note 199 (illustrating the government's attitude to remain nonpartisan); see also *infra* note 249 (considering the Indonesian government's attitude towards private foreign debt).

210. See *supra* notes 67-69 (exploring the disillusioned attitudes of Indonesians towards its judiciary).

211. See generally *Bank Exim Rejects Court's Decision on Bankruptcy Ruling*, JAKARTA POST, Nov. 21, 1998 (describing a commercial court decision not to hear a case because the bankruptcy claim "lacked 'simplicity'").

212. See *Indonesian Bankruptcy Law-2: Avoid Bentoel Scenarios*, *supra* note 41 (asserting the judicial system is corrupt and, consequently, prevents the utilization of the bankruptcy law); see also McCarthy, *supra* note 66 (arguing justice under the 1906 Indonesian Bankruptcy Code relied on who paid the judge the most amount of money); cf. Achmadi & Trommel, *supra* note 24 (suggesting the 1906 Indonesian Bankruptcy Code did not need reformation, but rather the administration of justice did); cf. Thoenes, *supra* note 66 (implying bribery is commonplace in Indonesia and, because the Indonesian judiciary is under paid, it too is susceptible to such egregious practices). Granted this attitude reflects the views of the Indonesian population prior to the enactment of the new law, but there is not any new evidence to support a change in the operation of the judiciary, or more

Similarly, the previous inefficiency of the judiciary appears to have carried over into the commercial court.²¹³ Another reason why the new bankruptcy law has not been more frequently employed is founded in the cultural tendency of the Indonesian people, to avoid confrontation.²¹⁴ Furthermore, with an astronomical insolvency level,²¹⁵ utilization of the bankruptcy law as a resolution would virtually require taking every Indonesian business to court.²¹⁶ Finally, debtors are eager to avoid settling their insolvency pursuant to the newly amended bankruptcy law because it is so heavily weighed in favor of creditors.²¹⁷ This supports why the Jakarta Initiative has proved to be the more popular means for confronting this issue.²¹⁸

An additional reason that minimizes the popularity of the new bankruptcy law is that the new law only applies to general creditors.²¹⁹ Depending on how many creditors are secured creditors, the new bankruptcy law may prove to be virtually useless, as these creditors are left with the remedies provided by the district court pursuant to the original bankruptcy law.²²⁰ Complicating this further is the fact that the judiciary lacks the confidence and trust of the Indonesian people.²²¹

specifically, to the new commercial court; or in the opinion of the Indonesian people. Therefore, it is likely the Indonesian people have transferred this attitude onto the new bankruptcy court.

213. See *Indonesian Business. A Survival Guide*, ECONOMIST, Jan. 30, 1999, at 59 (asserting it is virtually impossible to force the liquidation of a debtor's estate and those who have attempted to do so have been caught up in lengthy appeals).

214. See Achmadi & Trommel, *supra* note 24 (adding the inefficient judiciary also serves as a reason why the original bankruptcy law was not used). Although the context of this article was in reference to the original insolvency law, no reason exists as to why it can not equally apply to the Indonesian people following the enactment of the new bankruptcy law.

215. See *supra* note 93 (discussing the insolvency levels throughout Indonesia).

216. See Grainne McCarthy, *Deluge of Cases Expected*, *supra* note 127 (explaining why the 1998 amendments to the Indonesian Bankruptcy Code will be ineffective); cf. Thoenes, *supra* note 66 (concluding the commercial court does not have enough personnel to be able to service all of the insolvent companies).

217. See Riyadi & Unditu, *supra* note 148 (observing the procedure through which a petition for bankruptcy may be filed and how easily a debtor may be deemed bankrupt); see also *supra* notes 126-54 and accompanying text (examining the bankruptcy law pursuant to the 1998 amendments). *But see* Keenan et al., *supra* note 207 (claiming the 1998 amendments to the Indonesian Bankruptcy Code have proved ineffectual because the commercial court is demonstrating a tendency to favor the debtor's positioning).

218. See *infra* notes 217-18 and accompanying text (noting the response to the Jakarta Initiative); see also *infra* notes 245-49 and accompanying text (expounding the positive response to the Jakarta Initiative).

219. See *supra* note 136 and accompanying text (discussing the limited application of the new law to general creditors only).

220. See *supra* notes 42, 138-44 and accompanying text (explaining the effect of bankruptcy on the debtor's estate under the 1906 Indonesian Bankruptcy Code and the 1998 amendments). Under the original bankruptcy law, the district court could provide the creditor with a lien over the debtor's property. However, due to the corruption and other problems existing under the original law, it was rarely utilized. See *supra* notes 65-71 and accompanying text (postulating why the 1906 Indonesian Bankruptcy Code was not utilized). Consequently, this is likely to be the continued attitude and secured creditors are likely to be left without a remedy.

221. See *supra* notes 68 and accompanying text (developing the corruptness of the Indonesian judiciary).

B. The Jakarta Initiative

Under the Jakarta Initiative, the negotiation of a restructuring plan should transpire through an “expeditious process” in order to minimize the adverse effects market uncertainty might have on the debtor.²²²

On November 3 – 4, 1998, the Jakarta Initiative conference transpired, at which approximately 1,200 Indonesian debtors congregated, attempting to negotiate the country’s extensive private debt.²²³ The Jakarta Initiative Task Force arranged the conference in an effort to encourage debtors and creditors to come together and settle on out-of-court restructuring plans.²²⁴

Despite the enthusiasm for the concept of the Jakarta Initiative, the conference highlighted the existence of difficulties, which may encumber the successful implementation.²²⁵ Included among these is how to value debtors’ assets and the creditors’ requirement of how the debtor proposes to survive the economic crisis.²²⁶ Additionally, Indonesian debtors are seeking debt write-offs,²²⁷ but creditors are not receptive to this.²²⁸ Conversely, creditors require that Indonesian corporations sell

222. See *The Jakarta Initiative, Four-Point Government Program (1998)* (Indon.).

223. See *Conference on Debt Begins*, *supra* note 159 (determining the large number of participants was indicative of the receptive attitude of both debtors and creditors to the Jakarta Initiative); see also Reiner, *supra* note 94 (stating the purpose of the conference was to persuade debtors and creditors to negotiate a restructuring of debt); see also Tedjasukmana, *supra* note 86 (explaining the World Bank and the Indonesian Government arranged the conference as an effort to advocate the utilization of out-of-court alternatives to bankruptcy in restructuring debts).

224. See, e.g., *Bakrie Looks to Debt Restructuring Deal*, THE JAKARTA POST, Nov. 3, 1998, at News.

225. See generally *Creditors Insist Debtors Sell Noncore Businesses*, *supra* note 92 (discussing the creditors’ prerequisite debtors being able to demonstrate the ability to generate cash-flow to entering debt restructuring negotiations); see generally *Indonesian Debtors, Japan Creditors Continue Talks*, ASIA PULSE, Nov. 4, 1998, at National Financial News (claiming the diversity of industries impedes wide-scale negotiations); see generally Reiner, *supra* note 92 (discussing the adverse opinions on how assets should be valued); see generally Kagda, *supra* note 137 (exploring the opposing views on whether the banks should write-off portions of the debt owed by Indonesian debtors).

226. See Reiner, *supra* note 92 (asserting future value of assets is essential to any restructuring settlement). But note, the Jakarta Initiative requires the debtor to delineate this. See *The Jakarta Initiative, Four-Point Government Program (1998)* (Indon.).

227. See Kagda, *supra* note 137 (evaluating whether portions of debt should be written-off by creditors).

228. See Tedjasukmana, *supra* note 86 (explaining the World Bank is against debt write-offs because they weigh so heavily in favor of debtors). This demand is problematic because the Jakarta Initiative specifies neither side is to be forced into making concessions during the negotiation of a restructuring plan. See *Jakarta Initiative, Four-Point Government Program (1998)* (Indon.). Although, from the debtor’s perspective, such a demand is a “commercial consideration” it also borders on the side of unfair bargaining power. If the debtors refuse to negotiate with their creditors unless debt write-offs will be provided, then the debtors’ creditors are either forced to make a concession or to terminate negotiations with the debtor. If the latter approach is opted for, then everybody is back at square one. If the creditors are general creditors, then they may seek relief through the new bankruptcy law. However, if the creditors are secured creditors, then the only relief available is through the traditional court system, which is virtually useless because of the corruption and inefficiency that has permeated the traditional courts. See *supra* notes 65-71 and accompanying text.

subsidiary businesses in order to stimulate cash flow.²²⁹ The inherent problem with this is that the sale of Indonesian debtors' subsidiary businesses in the current Indonesian market conditions would result in severely skewing the situation in favor of the creditors.²³⁰ Crucial to the successful implementation of the Jakarta Initiative is honest disclosure by Indonesian debtors.²³¹

V. EFFECTIVENESS

A consequence of any new regulation is the reality that the effectiveness may only be judged in hindsight. Consequently, the effectiveness of these new regulations cannot possibly be gauged with any real insight. Rather, the following section provides the various attitudes and theories which currently exist from which limited conclusions can be drawn. Despite this caveat, however, some certainties do appear to be emerging. Specifically, the popularity of the Jakarta Initiative is difficult to deny, just as the less embraced bankruptcy law is most likely doomed. To date, a great deal of speculation remains as to whether the new regulations will be effective and adequate.²³² Critics already forecast amendments to the new regulations,²³³ while advocates claim it is too soon to make a determination either

229. See *Creditors Insist Debtors Sell Noncore Businesses*, *supra* note 92 (postulating the relinquishment of subsidiary business was a prerequisite to creditors' agreement to engage in restructuring negotiations through the Jakarta Initiative). Specifically, creditors believe the aggressive horizontal expansion pursued during the prosperous part of the 1990s has left Indonesian companies inefficient. *Id.* Consequently, foreign creditors are under the impression that if Indonesian companies sell off the subsidiary portions of their companies, the liquidation of unnecessary assets will quickly generate cash flow while simultaneously produce money to pay off debts. *Id.*

230. See *Creditors Insist Debtors Sell Noncore Businesses*, *supra* note 92 (advocating this course of action could only be feasible if creditors agree to utilize future value); see also Khanna, *supra* note 92 (illustrating the effect of the devaluation of the rupiah on the market value of Indonesian assets); see also Reiner, *supra* note 92 (exploring the impact of devalued assets on debt negotiations).

231. See *Indonesian Debtors, Japan Creditors Continue Talks*, *supra* note 225 (referring to the Chairman of Indonesian Private Banks Association assertion that honest disclosure to creditors is useful information that will facilitate creditors' decisions throughout the negotiation process); see also Reiner, *supra* note 92 (explaining past disclosure from Indonesian debtors was insufficient). Full disclosure from creditors is essential to restoring creditors' confidence in the Indonesian economy. See *id.* Although debtors are sympathetic to the creditors' need of full disclosure, the continuing existence of economic instability prevents debtors from providing forecasts demonstrating how the debtors intend to survive. *Id.*; see also *Conference on Debt Begins*, *supra* note 159 (quoting the Indonesian Minister for Economy, Finance, and Industry that failure to provide full disclosure undermines the trust that is essential for settlement among debtors and creditors).

232. See generally Borsuk & Casey, *supra* note 147 (concluding the strengths of the insolvency law as amended are significant, but may be overshadowed by wide-spread scepticism); see also *Can Bankruptcy Law Solve Debt Problem?*, *supra* note 121 (concluding the Indonesian Bankruptcy Code as amended in 1998 is adequate to effectively address insolvency, but that the administration of justice serves as a significant obstacle).

233. See Keenan et al., *supra* note 207 (declaring ". . . the bankruptcy and foreclosure laws needed to facilitate debt restructuring either don't exist or have proved ineffectual"); see also Sender, *supra* note 159; compare Thoenes, *supra* note 68 (quoting a banker, "[t]he bankruptcy court is not working . . . [t]here has to be political pressure for it to work").

way.²³⁴ Many are of the opinion that the enactment of a new bankruptcy law will not provide a solution²³⁵ as the real task lies with addressing and remedying the "bankruptcy of law."²³⁶

With few cases filed under the new laws and a minute amount resulting in a bankrupt adjudication, creditors are cautious of the newly established commercial court.²³⁷ One weakness of the commercial court is its inability to adequately grasp and deal with the complexities and terminology of international finance.²³⁸ Those who have attempted resolution of insolvency under the new law have encountered irreconcilable judgements or have been immersed in court appeals.²³⁹ Much of the criticism and inconsistencies among rulings, however, are due to the novelty of the commercial court and are likely to dissipate as the nuances of the new law are

234. See *Going Bankrupt*, *supra* note 139; *Indonesia: Only 5 Cases Brought to Court Under New Law*, INDON. NAT'L NEWS AGENCY, Oct. 15, 1998; see also Alastair McIndoe, *IMF/Neiss/Indonesia-3: Cautious Optimism Over Econ Outlook*, DOW JONES NEWS SERVICE, Oct. 13, 1998; cf. *Indonesia World Bank Gives Approval*, NAT'L LAW J., Nov. 16, 1998, at A14 (quoting the head of the World Bank's corporate restructuring and governance group that despite the criticism early rulings received the new bankruptcy law is evidently working).

235. See generally Michael Shari, *Getting Out From Under*, BUS. WK., Feb. 1, 1999, at 28 (stating Indonesia lacks a "... sound legal structure and a credible bankruptcy system").

236. See Achmadi & Trommel, *supra* note 24 (asserting "[t]he real problem in Indonesia is not bad law, but the inefficient administration of justice"); see also *Can Bankruptcy Law Solve Debt Problem?*, *supra* note 121 (claiming the judiciary is in need of reformation itself). According to a survey conducted by the American Bankruptcy Institute, a fundamental objective of any bankruptcy law should be to either provide a "fresh start" for the debtor, or to maximize the amount of the debtor's assets distributed to the respective creditors. See Achmadi & Trommel, *supra* note 24. Indonesia's original Bankruptcy Code had met this criteria, and thus, should not necessarily have been discarded. *Id.* This becomes more apparent when considered in conjunction with the effectiveness of the 1998 amendments to date. See *supra* notes 211-21 and accompanying text (describing the deficiencies of the 1998 amendments to the Indonesian Bankruptcy Code).

237. See Dan Murphy, *Companies: Astra's Rocky Road: Car Maker Tries to Extract Itself From Mountain of Debt*, FAR E. ECON. REV., Dec. 17, 1998, at 51 (stating bankers are of the opinion that the new commercial court lacks the influence to challenge massive companies, due to their political and economic influence); see also Riyadi & Unditu, *supra* note 148 (expressing concern over the fact that the commercial court's judges are the same judges from the judiciary with a reputation of corruption); see also Tedjasukamna, *supra* note 86 (explaining that the effect of only two cases resulting in bankruptcy, of the twelve filed, indicates the lack of receptiveness to the new commercial court); see also Thoenes, *supra* note 66 (observing the unfavorable response of lawyers and bankers); see generally *Commercial Court Needs Modernization*, JAKARTA POST, Jan. 29, 1999, at News (outlining the reasons for skepticism towards the commercial court). *But cf.* *Indonesia World Bank Gives Approval*, *supra* note 234 (challenging that despite the criticism of early decisions, the new bankruptcy law is evidently working).

238. See *Commercial Court Needs Modernization*, *supra* note 236 (asserting inconsistencies among commercial court rulings are due to the lack of effective and efficient means to cope with modern finance). Fortunately, these inadequacies can be rectified with time and more experience for the commercial court and its judges. *Id.* Whether creditors will exert the required patience and faith in the new system remains an unanswered question. If the creditors' skepticism is validated for too much longer, it is likely these creditors will lose all confidence in the ability of the new court to provide a sufficient remedy. Consequently, the new law may be facing the same fate as the last: abandonment and idleness.

239. See *Indonesian Business. A Survival Guide*, THE ECONOMIST, Jan. 30, 1999, at 58; see also *Court Overturns Modernland Bankruptcy Ruling*, ASIAN WALL ST. J., Dec. 9, 1998 (scrutinizing the rationale behind the Indonesian Supreme Court's decision to overturn a bankruptcy adjudication); see also Thoenes, *supra* note 66 (reviewing various decisions under the new law and their implications, including the reversal of two of three bankruptcy declarations that have occurred under the 1998 amendments to the bankruptcy law).

forged through.²⁴⁰ Furthermore, creditors have expressed that they consider utilization of bankruptcy to be a course of last resort.²⁴¹

Similarly, INDRA has also suffered from a high amount of criticism. Most notably, many are discontent with the current value of the rupiah and do not want to be locked into such a low currency exchange rate.²⁴² Additionally, pursuant to the terms of INDRA, the debtor is required to pay interest and a percentage of the principle amount of the debt owed to creditors immediately.²⁴³ Finally, the successful implementation of INDRA relies on creditors writing off significant portions of debt.²⁴⁴

Currently, speculation concludes that the Jakarta Initiative is the best solution available to Indonesian debtors with debts owing to foreign creditors.²⁴⁵ Favoritism lies with the Jakarta Initiative because it is viewed as a “win-win” solution for both debtors and creditors.²⁴⁶ Additionally, the Jakarta Initiative provides for a settlement

240. See generally *Court Turns Down Claim Against Dharmala Agrifood*, JAKARTA POST, Dec. 8, 1998 (emphasizing the jurisdictional limitations created by the new law as they applied to specific cases); see generally *Jakarta Court Rejects IFC Bankruptcy Claim Against Dharmala*, supra note 142 (highlighting a significant change the new law brought about and the confusion this change created in a specific case when a creditor filed petition against its debtor).

241. See Kagda, supra note 137 (citing the statements of a vice-president of the Amro Bank who claimed use of the bankruptcy court was the “least attractive option”); see also Achmadi & Trommel, supra note 24 (explaining the Indonesian culture is non-confrontational and thus, the bankruptcy law is avoided as a means of settling outstanding debts).

242. See Thoenes, supra note 66 (claiming the value of the rupiah correlates with the amount of interest debtors exert towards INDRA); see generally *Indonesia Debt Agency Sets Exchange Rate at Rp7,815/US\$1*, supra note 206 (implying more debtors are interested in INDRA due to the higher currency exchange rate available).

243. See Thoenes, supra note 66 (providing the difficulties debtors and creditors face in attempting to negotiate restructuring plans for debt).

244. See *RI Lacks Experts for New Bankruptcy Law*, supra note 41 (clarifying any debt write offs by creditors would be in addition to the eight-year rescheduling of payment period). Creditors have expressed resistance and discontent with the notion of writing off any of the existing debt. See e.g., Kagda, supra note 137 (demonstrating creditors' attitude towards writing off existing debt).

245. See *Creditors Believe Jakarta Initiative the Best Option: Banker*, ASIA PULSE, Nov. 4, 1998, at Nationwide Financial News (asserting that patience from both creditors and debtors is vital to the success of the Jakarta Initiative); see also Brede, supra note 190 (arguing Indonesia needs an out-of-court method through which debts can be repaid without the liquidation of assets and that the Jakarta Initiative is comprised of “. . . the ‘best’ parts of different bankruptcy systems around the world”); see also *Indonesian Govt*, supra note 155 (including a statement by the Coordinating Minister for Economy, Finance and Industry that the Jakarta Initiative is an integral aspect of economic recovery); see generally *Conference on Debt Begins*, supra note 159 (emphasizing the importance of out-of-court settlements among debtors and creditors to restoring the Indonesian economy's health); see generally *Indonesian Business. A Survival Guide*, supra note 239 (outlining what one Indonesian firm underwent to restructure its debt pursuant to the Jakarta Initiative); see generally Shari, *Getting Out From Under*, supra note 235 (asserting debt restructuring [under the Jakarta Initiative] is necessary in light of the inadequate bankruptcy law).

246. See *Indonesian Govt*, supra note 155 (advocating the framework of the Jakarta Initiative enables both parties to attain their respective goals while promoting good working relationships between debtor and creditor); see also *Indonesian Debtors, Japan Creditors Continue Talks*, supra note 225 (quoting the Chairman of the Indonesian Private Banks Association that restructuring of debts through negotiations should produce “win-win” results for both creditors and debtors).

that allows for bankruptcy to be avoided.²⁴⁷ Avoiding bankruptcy and restructuring debt out of court will minimize job elimination in indebted companies.²⁴⁸ The Jakarta Initiative is also preferred as the means for debt restructuring because it removes the government from the process.²⁴⁹

Critics of the Jakarta Initiative assert that the initiative will only result in further negotiations without any sort of settlement if the Jakarta Initiative does not include some repercussion for failing to settle.²⁵⁰ Furthermore, the Indonesian government is of the opinion that foreign creditors will have to alleviate some of the debt owed by the Indonesian private sector through debt write-offs.²⁵¹ Yet, foreign banks have not been responsive to this concept.²⁵²

As of mid-December, 1998, Indonesia appears to be far from the road to recovery.²⁵³ For instance, Indonesia is still experiencing high inflation and

247. See *Indonesian Govt*, *supra* note 155 (recognizing the avoidance of bankruptcy permits debtors to regain strength and competitiveness); see also Brede, *supra* note 190 (outlining the goals and structure of the Jakarta Initiative).

248. See Reiner S., *supra* note 92 (setting forth the fact that resorting to the bankruptcy court will result in the loss of jobs); see also *Conference on Debt Begins*, *supra* note 159 (implying the future stability of the Indonesian economy relies on long-term financial security of debtors).

249. See *Indonesia Bailout of Private Debts to Burden Taxpayers: WB*, ASIA PULSE, Nov. 3, 1998, at Nationwide Financial News (maintaining that once the government establishes the framework through which debtors and creditors negotiate, the government's role is complete). If the government were to help pay debtors' debts, the ultimate result would be an increase in taxes. *Id.* This undesirable result can be avoided by requiring those who procured the debt to repay it through the utilization of the Jakarta Initiative. *Id.*; see also *Indonesian Govt*, *supra* note 155 (restricting the government's involvement in the restructuring of debt to developing the framework for negotiations).

250. See Tedjasukmana, *supra* note 86 (arguing debtors have an incentive to drag out the negotiation process while vying for a better currency exchange rate).

251. See Kagda, *supra* note 137 (quoting Dono Iskandar Joyosubrote, an adviser to INDRA).

252. See *id.* (explaining banks are hesitant to provide debt write-offs because debtors have not been reasonable in negotiations and the decision to give a debtor a debt write-off would depend on the debtor's cash-flow).

253. See *1997-98 In Indonesia*, *supra* note 1 (noting the Indonesian government expects an economic contraction in all major sectors); see also *Crisis-Hit Countries Need More Political Power*, BUS. DAY (THAIL.), Jan. 25, 1998, at Business (concluding full economic recovery relies on political stability and dedication to economic reform); see also Bruce Einhorn et al., *Report Card on Asia*, BUS. WK., Nov. 23, 1998, at 24 (giving Indonesia a 'D' in terms of restructuring the corporate sector and declaring it is "still a disaster area" overall); see also *Indonesia: Section I. Country Assessment*, PERC COUNTRY RISK REP., Jan. (1999) (maintaining that despite the recovery of the currency exchange rate and reduction of inflation, the political unrest continues to threaten the economic stability of Indonesia); see also Eddy Soeparno, *Is the Indonesian Economic Recovery for Real?*, THE JAKARTA POST, Dec. 22, 1998 (stating that Indonesia will not acquire economic stability until "... investors ... repatriate capital back into the country in the form of productive investments"). But see Janet Guttman, *Indonesia, Thailand Receive Fresh Loans from IMF*, FIN. EXPRESS, Dec. 17, 1998 (observing progress towards economic stability in Indonesia has been mixed and that the IMF demonstrates less certitude towards Indonesia than the other Asian countries affected by the crisis); cf. *IMF Oks \$1B for Indonesia*, AP ONLINE, Dec. 15, 1998 (explaining the IMF has loaned Indonesia an additional US\$957 million due to the country's progress toward economic stabilization and has agreed to continue lending funds provided Indonesia sustains its progress).

unemployment.²⁵⁴ Furthermore, gross domestic product fell fifteen percent in 1998, and it is predicted to continue falling throughout 1999.²⁵⁵ Additionally, many contend the economy will not stabilize until political modifications transpire.²⁵⁶

VI. CONCLUSION

In response to the wide-spread insolvency throughout Indonesia, the government responded, with the prompting of the IMF, to undertake reformation of the nearly century-old Indonesian Bankruptcy Code.²⁵⁷ Resulting from this undertaking were three regulations sharing the same goal: restoration of a stable economy.²⁵⁸ With less than a year passing since the enactment of these three regulations, conclusive determinations about their respective effectiveness and viability remains ambiguous.²⁵⁹ However, the Jakarta Initiative appears to be emerging at the forefront as the favorite means for addressing the issue of insolvency with Indonesian debtors and their respective creditors.²⁶⁰

The Jakarta Initiative looks as though both the debtors and creditors accept it. Although many issues still exist pertaining to its implementation, debtors and their

254. See *For Asia, The Worst May Be Over*, CHI. TRIB., Dec. 21, 1998, at 18 (stating as of mid-December, inflation was reported at eighty percent); see also Michael Richardson, *Prospects of a Recovery Brighten for Indonesia*, INT'L HERALD TRIB., Nov. 2, 1998 (claiming interest rates are too high for anyone to borrow); see also Philip Segal, *Risk of Social Crisis Rising in Asia*, UN Agency Finds, INT'L HERALD TRIB., Dec. 2, 1998, at 1 (asserting the unemployment rate has skyrocketed to fifteen percent from five percent in one year).

255. See *Yearender: Asian Economies Seek Recovery Through Reforms*, supra note 86 (forecasting economic growth in Indonesia will be negative six to eight percent for 1999); see also Riyadi, *RI Economy in Deep Water, and It's Sink or Swim Time*, supra note 77 (evaluating the economic predicament of Indonesia and concluding "[t]he country's economy remains a near hopeless case").

256. See *Briefing of the International Economic Policy, Export and Trade Subcommittee of the Senate Foreign Relations Committee*, FED. NEWS SERVICE, Jan. 27, 1999, at In the News (remarking economic growth cannot occur until Indonesia can establish a sound government); see also Einhorn et al., supra note 253 (postulating the recovery of the economy will remain delayed until elections in May, 1999 because of the association of President Habibie to President Suharto, which fuels the risk of political chaos); see also MacIntyre, supra note 1 (describing the dependency of the economy on Indonesia's political situation); see also Riyadi, supra note 77 (asserting the return to economic stability is directly related to the political health of Indonesia); see also *Yearender: Asian Economies Seek Recovery Through Reforms*, supra note 86 (claiming most analysts assert Indonesia's economic recovery relies on political stability and attribute the resignation of President Suharto to the economic crisis). But see, *Reform is Crucial*, ASIaweek, Jan. 8, 1998, at 66 (reflecting the Indonesian government has proceeded towards resolving the deficiencies within the banking industry, notwithstanding the volatile political condition).

257. See supra notes 65-93 and accompanying text (providing the historical framework for the need for insolvency reformation).

258. See supra notes 72-122 (describing how wide-spread insolvency permeated Indonesia and the requirements the IMF presented as an exchange for monetary support).

259. See supra notes 232-56 and accompanying text (describing the effectiveness of the respective regulations).

260. See supra notes 245-49 and accompanying text (illustrating the strengths and receptive responses to the Jakarta Initiative).

respective creditors are beginning to reach mutual agreements of how to restructure debts under the Jakarta Initiative.²⁶¹

Although a gallant effort has been made to formulate an insolvency law that is efficient, fair, and employed, Indonesia appears to have failed.²⁶² Substantively, the 1998 amendments appear to be adequate to achieve their intended purpose.²⁶³ However, one important element is missing that is vital to the insurance of any law's success, and that is the trust and confidence of the people who use the law.²⁶⁴ Furthermore, those who have employed the insolvency law are still finding themselves without quick results and tied up in lengthy appeals.²⁶⁵ Until Indonesia addresses these deficiencies, it is unlikely any law will be widely utilized.²⁶⁶ Similarly, INDRA currently faces doom.²⁶⁷ For one thing, debtors and their creditors are just now beginning to come to mutual agreement as to how debts should be restructured under the Jakarta Initiative.²⁶⁸ A prerequisite to enjoying the benefits under INDRA, however, is that debtors and creditors agree to an eight year restructuring plan.²⁶⁹ Debtors and creditors have been unable to reach such agreements so far because they have not been able to take advantage of INDRA.²⁷⁰ Furthermore, the registration deadline of July 30, 1999 is looming, and if debtors plan on employing INDRA they better decide and commit themselves soon.²⁷¹

261. See generally *Indonesian Business. A Survival Guide*, *supra* note 239 (discussing the settlement with the creditors of an Indonesian company); Shari, *supra* note 235 (mentioning some of the successful negotiations completed and underway).

262. See generally *supra* notes 237-41 (explaining the weaknesses of the 1998 amendments to the Indonesian Bankruptcy Code).

263. See *supra* notes 126-54 and accompanying text (delineating the provisions of the 1998 amendments to the Indonesian Bankruptcy Code).

264. See *supra* notes 68, 211-14 (arguing the Indonesian judiciary is corrupt and, thus, dissuades people from utilizing the bankruptcy law).

265. See *Indonesian Business. A Survival Guide*, *supra* note 239 (stating creditors are still finding it virtually impossible to force the liquidation of a debtor's estate, despite the enactment of the 1998 amendments to the Indonesian Bankruptcy Code).

266. See *supra* notes 211-14 and accompanying text (illustrating the ineffectiveness of the Indonesian insolvency law under the 1998 amendments).

267. See *No Indonesian Co. Has Joined Govt's Debt Settlement Program*, *supra* note 206 (verifying not one debtor has employed INDRA).

268. See *supra* note 261.

269. See *supra* notes 199-206 and accompanying text (delineating the provisions of INDRA).

270. See *id.*

271. See *No Indonesian Co. Has Joined Govt's Debt Settlement Program*, *supra* note 206 (noting the July 30, 1999, deadline will not be extended even if no one has yet to employ it); see also *Indonesian Debt Agency Sets Exchange Rate at Rp7,816/US\$1*, *supra* note 206 (elucidating many debtors have expressed an interest in utilizing INDRA). Perhaps with the value of the rupiah increasing and as inflation begins to come down, more debtors will be interested in employing INDRA because they would be able to lock into a higher currency exchange rate than would have been possible initially. See generally *id.*

Consequently, INDRA has been substantially avoided and has merged into the background.²⁷²

Unfortunately, Indonesia's economic problems are much more pervasive than the wide-spread insolvency resulting from the Asian financial crisis.²⁷³ Aside from addressing the problem of insolvency, Indonesia needs to engage in significant reformation of the operation of its judiciary.²⁷⁴ Additionally, Indonesia needs to take appropriate steps to restore political stability and insure its continued existence in the future.²⁷⁵

272. See generally *supra* note 271 (proclaiming six months before the expiration of the registration date, not one debtor has yet to employ INDRA). Additionally, little commentary on this topic was available as of the date of this comment).

273. See generally *supra* notes 68, 211-14 (exploring the corruption of the judiciary and the political instability of Indonesia).

274. See *supra* notes 68, 211-14 and accompanying text (demonstrating the impact of a corrupt judiciary).

275. See *supra* note 256 (asserting economic recovery directly relies on political stabilization).