

Efficiency and Transparency in Handling Bankruptcy and Postponement of Debt Payment Cases (Circular Letter of Supreme Court)

Background



The Supreme Court of Indonesia issued the Circular Letter No. 2 of 2016 on Enchantment in Handling Bankruptcy and Postponement of Debt Payment Cases in Court (“**Circular Letter No. 2/2016**”). Despite the pros and cons among practitioners due to several new requirements that are regulated under the Circular Letter No. 2/2016, this circular letter is the recent development of bankruptcy and postponement of debt payment (“**PKPU**”) process the in the Commercial Court.

Efficiency and Transparency

The Supreme Court orders the court apparatus to ensure the fulfillment of timeline as set out in the Law No. 37 of 2004 on Bankruptcy and PKPU (“**Bankruptcy Law**”) in handling bankruptcy and PKPU cases, and to use the available time optimally. The Circular Letter No. 2/2016 provides the elaboration of process flow and timeline as the guidance for the court apparatus. Under the Circular Letter No. 2/2016, the supervisory judge is authorized to ask a receiver for delivering the work schedule in the creditors’ meeting. If the settlement process of bankruptcy assets is protracted, the supervisory judges may (a) summon and ask clarification from a receiver (b) give written warning to the receiver, and (c) suggest a replacement of receiver to the presiding judge in the bankruptcy or PKPU proceeding.

If the creditors propose more than one receiver, the Commercial Court or presiding judge is authorized to form a receiver team. The composition of receiver team is made based on the interest of the parties in the bankruptcy and PKPU cases. The Circular Letter No. 2/2016 provides format of letter that needs to be submitted by the creditors for proposing the nominated receiver. Further, in relation to a voluntary bankruptcy or PKPU, the Supreme Court requires the debtor to obtain the creditors’ approval on the nominated receivers or administrators. The creditors’ approval shall be made in writing by using the format of letter as provided in the Circular Letter No. 2/2016. The creditors’ approval is a formal requirement for the acceptance of bankruptcy or PKPU petition. This requirement tends to expand the meaning of voluntary bankruptcy or PKPU. The Bankruptcy Law

and Law No. 40 of 2007 on Limited Liability Company only require spousal consent (if the debtor is an individual), and approval from the shareholders (if the debtor is a company) for the petition of voluntary bankruptcy and PKPU. It means the voluntary bankruptcy or PKPU is solely initiated by the debtor. Since the issuance of Circular Letter No. 2/2016, the debtor may only initiate the voluntary bankruptcy or PKPU subject to approval from creditors. The Circular Letter No. 2/2016 does not indicate whether the debtor must obtain approval from all creditors or it can be just one creditor.

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