

asean insiders series

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Insolvency

Resolving Insolvency In ASEAN

Whenever you plan to make a bold business move, it is important to study the monetary risks involved. Like any other regions of the world, investments into ASEAN are not monetarily risk-proof. Risk of financial distress can occur anytime despite your business' best efforts to avoid it. The right insolvency mechanisms will ensure business missteps do not spell the end of your business once and for all.

Statistically, ASEAN has fared well in the World Bank's latest Resolving Insolvency report. As background, resolving insolvency is one of the key indicators which the World Bank takes into account when assessing a country's overall Doing Business ranking. This study evaluates the time, cost and outcome of insolvency proceedings as well as the strength of each country's legal framework measured against a total of 190 economies worldwide. In the World Bank's 2018 Doing Business Report, 4 countries in the ASEAN region (namely Singapore, Malaysia, Indonesia and Thailand) have made it to the list of top 50 countries for resolving insolvency.

ASEAN as an investment destination subscribes to varying legal systems of different levels of maturity which may, at first, appear confusing to a foreign investor. However, from an insolvency perspective, the various jurisdictions within the region generally have in place statutory frameworks which ensure financially distressed companies undergo a regulated and orderly winding down process.

The region adopts a healthy and welcoming approach towards progressive insolvency regimes. For instance, in Singapore, reforms were made in 2017 to strengthen the country's existing insolvency framework. In Brunei, a recent Insolvency Order 2016 was passed to consolidate the country's insolvency provisions which were previously located in its Companies Act (Chapter 39). More recently on 1 March 2018, Malaysia introduced two new corporate rescue mechanisms aimed at assisting financially distressed companies with economically viable businesses. These mechanisms (known as corporate voluntary arrangement and judicial management) were inserted to Malaysia's Companies Act 2016.



In summary, efforts to remodel local laws in line with international standards in the face of challenging economic times signify ASEAN's commitment to easing the process of doing business and gaining the confidence of foreign investors.






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	 BRUNEI	 CAMBODIA
Governing legislation	<ul style="list-style-type: none"> Companies Act, Chapter 39 Insolvency Order 2016. 	<ul style="list-style-type: none"> Law on Insolvency 2007 Law on Commercial Enterprises 2005 Code of Civil Procedure 2006.
Courts	High Court of Brunei Darussalam.	Cambodian provincial or municipal courts (also known as the Court of First Instance).
Voluntary liquidation	<p>A company may be voluntarily wound up in the following situations:</p> <ul style="list-style-type: none"> when the period fixed for the duration of a company by the company's articles expires when the members of the company resolve by special resolution for the company to be voluntarily wound up when the members of the company resolve by extraordinary resolution to wind up the company on the grounds that it cannot continue its business by reason of its liabilities. 	May be initiated by either the company's members or its directors when the company fails to meet 1 or more valid or mature obligations to pay an amount in excess of KHR5 million (approximately USD1,200).
Involuntary liquidation	A creditor may commence proceedings against a debtor when the debtor owes a the creditor a sum exceeding BND10,000 and is unable to pay off such debt.	A creditor may commence involuntary bankruptcy proceedings against a company upon the company's non-payment of a debt of KHR5 million or more.
Priority claims	If the State or Government of Brunei is a creditor, they will have priority over secured creditors.	<p>The following claims are accorded priority over unsecured claims:</p> <ul style="list-style-type: none"> Employee wages, administrator's remuneration and fees, administrative fee, and the court's fees Secured claims State taxes with unfiled notices.
Liability of corporate officers and directors	Corporate officers and directors may be liable for the obligations of the company.	Company officers and directors may be criminally liable for fraud in certain circumstances, e.g. if the company officers or directors were found to have engaged in the illegal disposal of company assets.
Recognition of relief for foreign insolvency proceedings	<p>The Reciprocal Enforcement of Foreign Judgement Act, Chapter 177 allows for any judgement or order given or made by a Court in any civil proceedings to be applied for registration in Brunei.</p> <p>However, the judgement must be from 2 recognised jurisdictions, namely Malaysia or Singapore.</p>	<p>The final judgement of a foreign court shall be recognised as valid subject to the satisfaction of the following conditions:</p> <ul style="list-style-type: none"> Jurisdiction has been properly conferred on the foreign court by law or by treaty The losing defendant received service of summons or any other order necessary to commence the action The contents of the judgement or procedures followed in the foreign action do not violate the public order or morals of Cambodia Where there is a guarantee of reciprocity between Cambodia and the foreign country in which the court is based.
Cross-border insolvency	Foreign judgments or orders are recognised if the Attorney General is satisfied that substantial reciprocity will be assured on judgments given in the High Court of Brunei Darussalam in foreign countries.	Cambodia does not currently have any laws on cross-border insolvency.
Adoption of UNCITRAL Model Law on Cross Border Insolvency	No.	No.
Corporate rescue mechanisms	<ul style="list-style-type: none"> Corporate voluntary arrangements Moratoriums Judicial management. 	Judicial management.

	 INDONESIA	 LAOS
Governing legislation	<ul style="list-style-type: none"> • Law No. 40 of 2007 regarding Limited Liability Company • Law No. 37 of 2004 Concerning Bankruptcy and Suspension of Obligation of Payment of Debt. 	<ul style="list-style-type: none"> • The Law on Bankruptcy of Enterprises 1994 • The Law on Enterprise 2013.
Courts	The Commercial Court.	The People's Court.
Voluntary liquidation	May be initiated by the members of a company upon approval in a general meeting.	May be commenced by any member or director of the enterprise for <i>inter alia</i> , continual and unresolvable operational loss.
Involuntary liquidation	A creditor that has a due and payable receivable against a company may file a bankruptcy petition against such company if the debts owed to the former are not paid off by the debtor. The bankruptcy petition has to be supported by at least 1 other existing creditor of the same company.	A creditor may commence proceedings against a debtor enterprise if the creditor has sent debt repayment notices to the debtor enterprise at least 3 times, where the interval between each notice is not less than 20 days and the debtor enterprise has signed to acknowledge receipt but has not settled its debts.
Priority claims	Indonesia recognises the following 3 types of creditors: <ul style="list-style-type: none"> • Preferred creditors. Creditors with priority of claims over others, e.g. creditors of burial expenses, creditors of court proceeding expenses, workers' wages, or medical expenses • Secured creditors. Creditors holding collateral which they may use to claim repayment of debts • Concurrent creditors. Creditors who do not fall within the earlier 2 categories. Concurrent creditors will only be paid once the debtor pays off the preferred creditors. 	The following claims are accorded priority over unsecured debts: <ul style="list-style-type: none"> • Employee wages • Government debts • Secured debts.
Liability of corporate officers and directors	Indonesia adopts the principle of, "piercing the corporate veil", hence corporate officers and company directors may be held liable for faults and negligence in conducting their duties.	Executive officers found to have concealed accounting documents, hid assets, moved or transferred assets or improperly increased the company's debt, entered into security contracts without any security, terminated or diminished the rights of the company to demand payment of its receivables, shall be prosecuted according to the laws.
Recognition of relief for foreign insolvency proceedings	Generally, Indonesia does not recognise foreign judgments in insolvency proceedings.	Laos laws do not address recognition of relief in other countries, nor does the law distinguish foreign from local creditors.
Cross-border insolvency	Indonesia does not currently have any laws on cross-border insolvency.	Laos does not currently have any laws on cross-border insolvency.
Adoption of UNCITRAL Model Law on Cross Border Insolvency	No.	No.
Corporate rescue mechanisms	<ul style="list-style-type: none"> • Debtors may make an application to court to suspend their debt payment obligations • Debtors may negotiate with creditors on an agreeable debt settlement plan. 	None.

	 MALAYSIA	 MYANMAR
Governing legislation	<ul style="list-style-type: none"> • Companies Act 2016 • Companies (Corporate Rescue Mechanism) Rules 2018 • Companies (Winding-Up) Rules 1972. 	<p>The current law governing insolvency is the Myanmar Companies Act 1914.</p> <p>Note that the Myanmar Companies Act 1914 is set to be replaced by the new Myanmar Companies Law (“MCL”) passed in 2017.</p>
Courts	High Court of Malaya and High Court of Sabah & Sarawak.	The relevant District Court.
Voluntary liquidation	<p>May be initiated by the company through a declaration of the directors on the company’s state of affairs whether it is solvent or insolvent, followed by a resolution of 75% percent in value of members present and voting to voluntarily wind-up the company.</p> <p>There are 2 types of voluntary winding-up:</p> <ul style="list-style-type: none"> • members’ voluntary winding-up if company is solvent • creditors’ voluntary winding-up if company is insolvent. 	<p>May be initiated following the satisfaction of either one the following conditions:</p> <ul style="list-style-type: none"> • when the period fixed for the duration of a company by the company’s articles expires • when a dissolution event stipulated by the company’s articles of association occurs. <p>Additionally, the company’s shareholders must pass a winding-up resolution.</p>
Involuntary liquidation	A creditor whose debt is outstanding may issue a statutory demand giving the debtor company 21 days to make payment. If the debtor company fails to do so, the creditor may file a petition in the High Court to wind-up the debtor company, leading to cessation of business and distribution of realised assets to the creditors.	Creditors may initiate an involuntary liquidation only after they convene a meeting of creditors. Following that, a liquidator will be appointed to set up an account of the winding up and call a general meeting. Within a week of the general meeting, the liquidator shall send a copy of the winding up account to the Registrar. 3 months after the Registrar receives the notice, the company shall be deemed dissolved.
Priority claims	<p>The following claims are accorded statutory priority over unsecured debts:</p> <ul style="list-style-type: none"> • Costs and expenses of winding up • Employee wages and commissions • Employee compensation • employee remuneration for vacation leave • Amounts due in respect of contributions to the employees’ social security , superannuation or provident fund during the 12 months before the commencement of winding up • Federal taxes. 	<p>The following claims are accorded priority over creditors’ secured and unsecured debts:</p> <ul style="list-style-type: none"> • Debts due to the government • Debts due to the local authority • Salary and wages due to employees • Debts owed to the Central Bank and State-owned financial institutions. <p>Note that under the MCL that is expected to come into force soon, the priority of claims is as follows:</p> <ul style="list-style-type: none"> • Debts due to the government or local authority • Salary and wages due to employees • Salary and wages of any labour or workman • Compensation in respect of the death or disablement of any officer or employee • Payment applicable to provident fund, pension fund, gratuity fund or any other employee welfare fund • Expenses payable on any investigation for the service of any labour or workman salary.
Liability of corporate officers and directors	Corporate officers and directors are generally not liable for their corporation’s obligations. However, if such officers or directors are guilty of any fraudulent acts or misfeasance when the company was insolvent causing loss to the company, the court may declare that they be made personally liable for the whole or part of the loss.	Corporate officers and directors are liable for their corporation’s obligations and also for pre-insolvency actions by the companies.
Recognition of relief for foreign insolvency proceedings	There is no Malaysian legislation that recognises foreign insolvency proceedings except where foreign companies are registered and have a place of business in Malaysia. In these instances, foreign liquidators appointed in the foreign company’s place of origin shall have the powers and functions to manage the assets and affairs of the Malaysian place of business until a liquidator for Malaysia is appointed by the Malaysian court.	There are no recognitions of relief for insolvency proceedings in other countries as Myanmar is not a signatory to any treaties on international insolvency.
Cross-border insolvency	Malaysia is not a signatory to any treaty on international insolvency or restructuring. However, note the exception pertaining to the liquidation of foreign companies registered and having a place of business in Malaysia.	Myanmar has no procedures on cross-border insolvency.
Adoption of UNCITRAL Model Law on Cross Border Insolvency	No.	No.
Corporate rescue mechanisms	<ul style="list-style-type: none"> • Scheme of compromise or arrangement • Corporate voluntary arrangements • Judicial management. 	None.

	 PHILIPPINES	 SINGAPORE
Governing legislation	<ul style="list-style-type: none"> • Civil Code • Corporation Code • Financial Rehabilitation and Insolvency Act (“FRIA”) • Presidential Decree No. 902-A • Financial Rehabilitation Rules of Procedure • Financial Liquidation and Suspension of Payments Rules for Procedure for Insolvent Debtors. 	<ul style="list-style-type: none"> • Companies Act (Chapter 50) and its amendments • Companies Regulations • Companies (Winding Up) Rules (Revised edition 2006).
Courts	Special Commercial Court.	High Court.
Voluntary liquidation	May be initiated through the filing of a verified petition for liquidation with the court. The petition must establish the insolvency of the debtor. If the court is satisfied that the debtor is insolvent, it will proceed to issue a Liquidation Order.	<p>May be initiated by the members so long as the company is still solvent. Solvency in this context refers to the fact that a company must be in the position to pay their debts in full within 12 months after the commencement of winding up. To this end, directors of the company will have to file a declaration of solvency.</p> <p>A voluntary liquidation typically commences upon the members’ passing of a special resolution. Liquidators are appointed by the company.</p>
Involuntary liquidation	<p>3 or more creditors of a corporate debtor with a total credit amount of at least:</p> <ul style="list-style-type: none"> • PHP 1 million • 25% <p>of the subscribed capital stock or partners’ contribution may seek liquidation of an insolvent corporate debtor by filing a petition for liquidation of the debtor with the court.</p> <p>The court will then determine if the petition has merits. If so, it will issue a Liquidation Order on the debtor.</p>	<p>Creditors may initiate involuntary liquidation by proving the company’s inability to pay debts through an originating summons.</p> <p>A company will be deemed to be unable to pay off its debts when:</p> <ul style="list-style-type: none"> • a demand for payment has been served on the debtor following a creditor’s claim for more than S\$10,000 and such payment is not made after 3 weeks • the execution of judgment obtained by a creditor remains partly or wholly unpaid • it is proved to the court’s satisfaction that the debtor is unable to pay off its debts.
Priority claims	The priority of claims is listed in the Civil Code and other relevant laws. Certain types of credits such as credits for services rendered by employees enjoy priority of claim at liquidation.	<p>The major privileged claims are listed in the following order (from most to least privileged):</p> <ul style="list-style-type: none"> • Winding up costs • Employee wages, benefits, work injuries, contributions, remunerations, etc. • Tax assessed before the commencement of the winding up.
Liability of corporate officers and directors	<p>Corporate officers and directors may be personally liable if:</p> <ul style="list-style-type: none"> • they assented to patently unlawful acts of the corporation • they are guilty of gross acts of negligence or bad faith • they acquire any personal or pecuniary interest in conflict with their duty as directors. 	<p>Corporate officers and directors may be personally liable:</p> <ul style="list-style-type: none"> • for failing to keep proper accounts of the company for up to 2 years • for knowingly being a party to fraud.
Recognition of relief for foreign insolvency proceedings	Applicants may apply for relief under the FRIA.	Applicants may apply for relief under the UNCITRAL Model Law on Cross Border Insolvency, which Singapore has adopted and incorporated into its domestic legislation.
Cross-border insolvency	<p>Foreign insolvency proceedings are recognised under the FRIA which incorporates the UNCITRAL Model Law on Cross Border Insolvency.</p> <p>However, courts may refuse to take action on any cross-border insolvency proceedings that:</p> <ul style="list-style-type: none"> • would be manifestly contrary to public policy • involves a country that does not extend its recognition to a Philippine rehabilitation proceeding. 	Singapore incorporates the UNCITRAL Model Law on Cross Border Insolvency into its domestic legislation, thus recognizing cross-border insolvency proceedings.
Adoption of UNCITRAL Model Law on Cross Border Insolvency	Yes.	Yes.
Corporate rescue mechanisms	<ul style="list-style-type: none"> • Out-of-court or informal restructuring agreements • Rehabilitation plans • Judicial management. 	<ul style="list-style-type: none"> • Judicial management • Scheme of arrangement.

	 THAILAND	 VIETNAM
Governing legislation	<ul style="list-style-type: none"> Civil and Commercial Code Public Limited Company Act B.E. 2535 (1992) Bankruptcy Act B.E. 2483 (1940) Establishment of and Procedure for Bankruptcy Court Act B.E. 2542 (1999) LED's Order No. 393/2549 concerning reorganization administration practice Ministerial Regulation on Reorganization Practice B.E. 2541. 	<ul style="list-style-type: none"> Law on Enterprises Law on Bankruptcy No. 51/2014/QH13 dated 19 June 2014 promulgated by the National Assembly ("Law on Bankruptcy") Decree No. 22/2015/ND-CP dated 16 February 2015 ("Decree 22") Resolution No. 03/2016/NQ-HDTP dated 26 August 2016 of the council of justices of the Supreme People's Court ("Resolution 03").
Courts	<ul style="list-style-type: none"> Central Bankruptcy Court Regional Bankruptcy Courts Bankruptcy division of the Supreme Court. 	Provincial or district-level People's Court of the insolvent company's registered head office.
Voluntary liquidation	May only be commenced by members of the company and if the liquidator finds that insolvency is required.	If the company is insolvent, the company's owner(s) or people holding certain managerial positions in the company may file a petition for bankruptcy. The Law on Bankruptcy defines that insolvent companies are companies failing to perform an obligation to repay a debt within 3 months from the maturity date.
Involuntary liquidation	A creditor may initiate involuntary liquidation by petition to the court on the grounds that the debtor has indebtedness of an amount of at least THB2 million regardless of whether the debt is mature or contingent.	Creditors, trade unions and/or employees can only place debtors in involuntary liquidation through insolvency proceedings.
Priority claims	<p>Secured creditors have a right of mortgage, pledge or retention.</p> <p>Privileged debts for unsecured creditors will be distributed in the order prescribed by the relevant provision of the Bankruptcy Act.</p> <p>Unsecured and unprivileged debts will only be paid once other creditors have received repayment of debts.</p>	<p>After secured debts, the liquidated assets of an insolvent company are distributed in the following order:</p> <ul style="list-style-type: none"> Costs and expenses relating to the bankruptcy proceeding Unpaid wages, severance allowances, social insurances and other employee benefits Debts arising out of the commencement of the insolvency proceedings Financial obligations to the State, unsecured debts payable to creditors, secured debts which have not been paid due to the value of the collateral asset being insufficient to pay for such secured debts Distribution of remaining assets to the owners of the bankrupt company. <p>However, note that the assets of a bankrupt credit institution are distributed differently. The order is as follows:</p> <ul style="list-style-type: none"> Costs and expenses relating to the bankruptcy proceeding Unpaid wages, severance allowances, social insurances and other employee benefits Tax liabilities Payments to depositors Secured debts Unsecured debts Distribution of remaining assets to the owners of the bankrupt credit institution.
Liability of corporate officers and directors	<p>Generally, directors and corporate officers have distinct liabilities from that of the company. However, they may be held criminally liable for:</p> <ul style="list-style-type: none"> making statements relating to the financial standing of the company to the general meeting removing or damaging pledged company property. 	<p>Corporate officers and directors may be held liable for their corporation's obligations in the following circumstances:</p> <ul style="list-style-type: none"> where the director or corporate officer would be personally responsible for entering into a transaction without or beyond the scope of authorisation of the corporation where the director or corporate officer has directed the company to violate the law.
Recognition of relief for foreign insolvency proceedings	Foreign judgments or orders on insolvency proceedings in other countries have no effect on the debtor's property in Thailand. Foreign creditors who are domiciled outside of Thailand may claim repayment of debts upon compliance with certain conditions.	There are no direct provisions on recognition of relief for foreign insolvency proceedings. However, in practice judges will consider requests for assistance made by foreign authorities based on Vietnamese laws and mutual legal assistance treaties.
Cross-border insolvency	<p>Foreign creditors are permitted to file bankruptcy or business reorganisation petitions against a Thai debtor, but Thai courts do not recognize foreign insolvency proceedings and bankruptcy or reorganization orders in Thailand do not affect the debtor's assets outside of Thailand.</p> <p>Foreign creditors may submit claims for repayment of debts in accordance with Thai bankruptcy proceedings provided they meet certain conditions.</p> <p>Thailand is not a party to international treaties on restructuring or insolvency procedures.</p>	<p>There is no clear provision on cross-border insolvency in Vietnam. However, courts may consider requests for assistance made by foreign authorities based on Vietnamese laws and mutual legal assistance treaties.</p> <p>Where the foreign authority making the request has not made a mutual legal assistance treaty with Vietnam, the courts will consider exercising legal assistance on a reciprocal basis.</p>
Adoption of UNCITRAL Model Law on Cross Border Insolvency	No.	No.
Corporate rescue mechanisms	Business reorganisation.	<ul style="list-style-type: none"> Recovery of business operations Special control (only applicable to credit institutions).

RESOLVING INSOLVENCY

Resolving insolvency is one of the contributing factors to the World Bank's annual Doing Business report. The better the country is at resolving its insolvency proceedings, the better its overall rank in the Doing Business report.

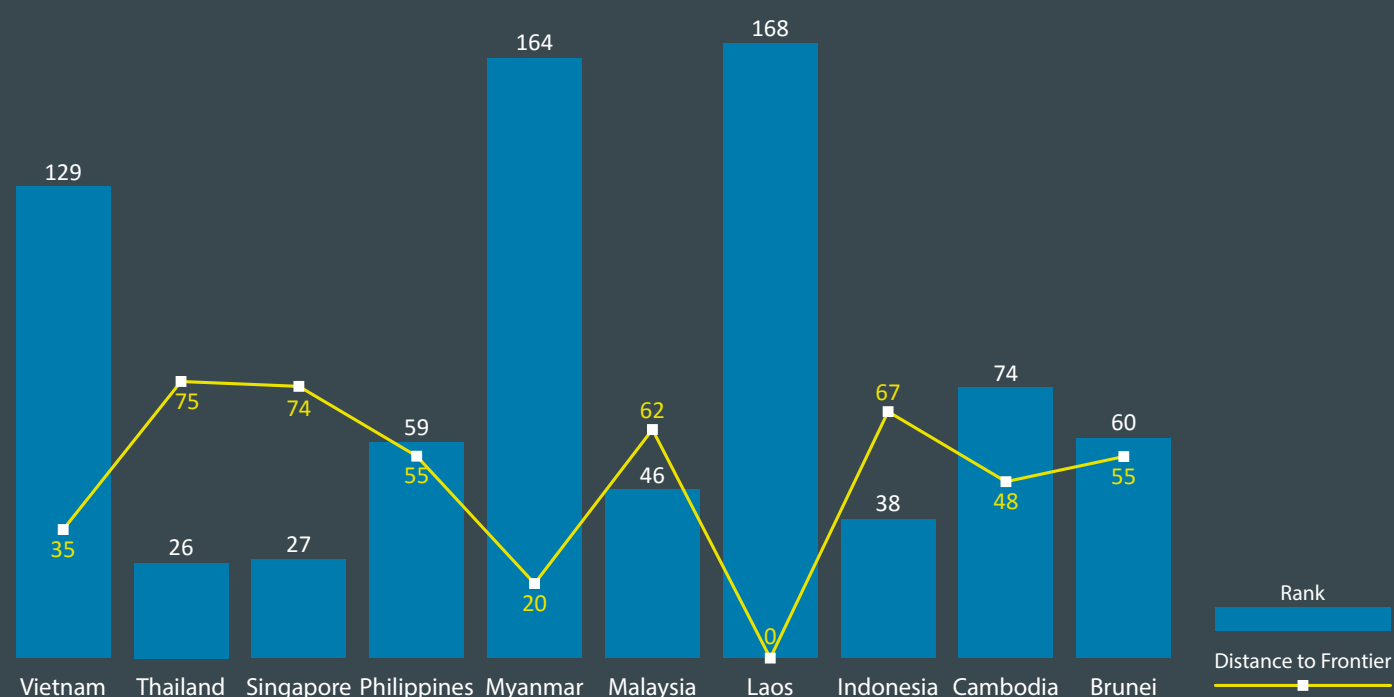
The World Bank's Resolving Insolvency analysis covers the time, cost and outcome of insolvency proceedings involving domestic legal entities. These variables are used to calculate the recovery rate, which is recorded as cents on the dollar recovered by secured creditors through the various debt recovery mechanisms. The World Bank uses the lending rates from the International Monetary Fund (IMF) and data from central banks and the Economist Intelligence Unit to determine the present value of the amount recovered by creditors.

This edition of our ASEAN Insiders Corporate Insolvency issue comprises data from the World Bank's most recent round of data collection dated June 2017.

Country	Recovery rate (cents on the dollar)	Time (years)	Cost (% of estate)	Strength of insolvency framework (0-16)
Brunei	47.2	2.5	3.5	9.5
Cambodia	14.2	6.0	18.0	13.0
Indonesia	64.3	1.1	22.0	10.5
Laos	0.0	No practice	No practice	0.0
Malaysia	81.3	1.0	10.0	6.0
Myanmar	14.7	5.0	18.0	4.0
Philippines	21.3	2.7	32.0	14.0
Singapore	88.7	0.8	4.0	8.5
Thailand	68.0	1.5	18.0	12.5
Vietnam	21.8	5.0	14.5	7.5

Distance to Frontier scores

The ranking of economies on the ease of resolving insolvency is determined by sorting their distance to frontier scores for resolving insolvency. These scores are the simple average of the distance to frontier scores for two indicators, that is, the recovery rate and the strength of insolvency framework index.



¹ The World Bank, Doing Business 2018: Reforming to Create Jobs. Note that the Doing Business 2018 report was compiled based on the data and reforms affecting all sets of indicators implemented between the months of June 2016 to June 2017.

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