

nh**quang**&associates

Reforming Bankruptcy Law in Vietnam

Views from Insolvency Administrator

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Structure of presentation

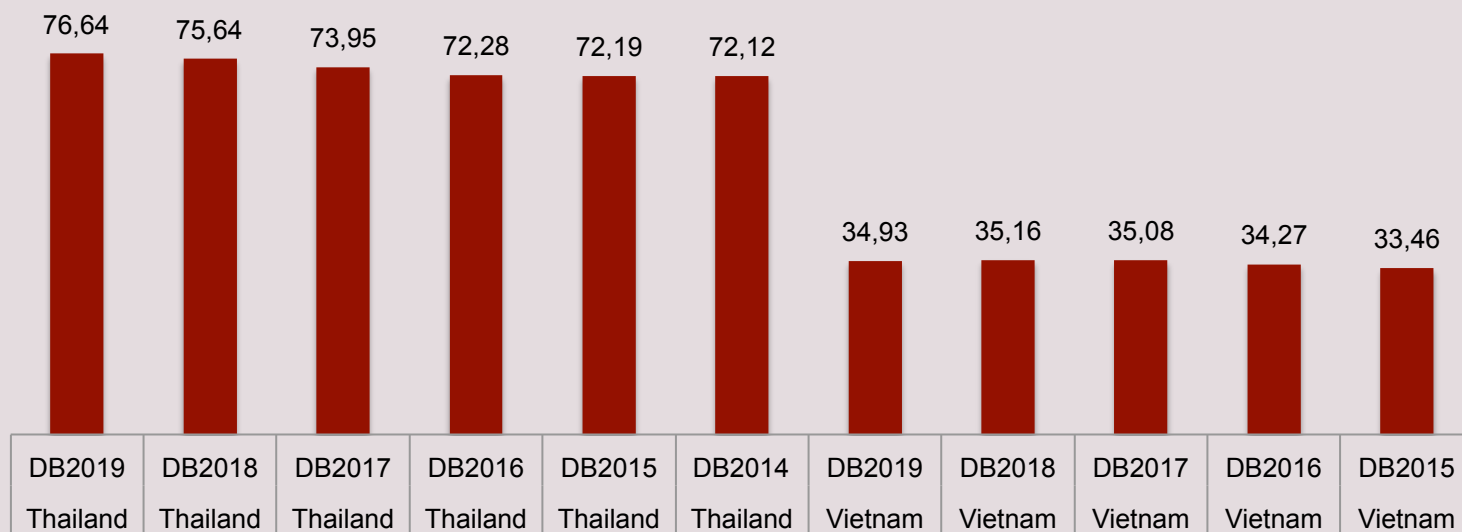
- ✧ Comparision of Resolving Insolvency indicator: Vietnam vs. Thailand
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Comparison of Resolving Insolvency indicator: Vietnam vs. Thailand



Comparison of Resolving Insolvency indicator: Vietnam vs. Thailand

Score-Resolving insolvency (DB15-19 methodology)



Comparision of Resolving Insolvency indicator in 2018: Vietnam vs. Thailand

	 Thai	 Vietnam
Rank	24	133
Time	1.5	5.0
Cost	18.0	14.5
Outcome	1	0
Recovery rate for creditors	69.8	21.3
Strength of insolvency framework	12.5	7.5
Commencement of proceedings	2.5	2.5
Management of debtor's assets	5.0	3.0
Reorganization proceedings	3.0	2.0
Creditor participation	2.0	0.0

Evolution of Bankruptcy Law in Vietnam



Evolution of Bankruptcy Law in Vietnam

First Law 1993

>>> 10 years >>>

- 151 requests were submitted to the courts for bankruptcy procedure.
- 46 enterprises were declared 'bankrupted'.
- All provincial courts have jurisdictions over bankruptcy procedure with other provincial state agencies' representatives in the Liquidation Teams. No district courts had jurisdiction over this procedure.

Second Law 2004

>>> 10 years >>>

- 336 requests were submitted to the courts for bankruptcy procedure.
- 83 enterprises were declared 'bankrupted'.
- All provincial courts had jurisdictions over bankruptcy procedure for enterprises and large-scale cooperatives with other provincial state agencies' representatives in the Liquidation Teams. District courts had jurisdiction over the small cooperatives.

Third (current) Law 2014

>>> 4 years >>>

- 1580 requests were submitted to the courts for bankruptcy procedure. 271 enterprises have been supervised.
- 60 enterprises were declared 'bankrupted'.
- All provincial courts and all district courts have jurisdiction over bankruptcy procedure for enterprises and cooperatives.

Evolution of Bankruptcy Law in Vietnam

First Law 1993

- Provincial Courts had principal role to handle bankruptcy procedures.
- The court set up 2 separate teams: Asset Management Team and Asset Liquidation Team, which consisted court staff, representatives from other provincial agencies.
- The Court/Asset Management Team had obligated to identify creditors and debtors
- Regulations and court practices focused on liquidation of assets rather than business recovery.

Second Law 2004

- Continuance of principal role of Judge and Liquidation Team to handle bankruptcy procedures
- Extending scope of applicants for requesting bankruptcy procedures, *e.i* owners of enterprises.
- The Court/Liquidation Team had obligated to identify creditors and debtors.
- Regulations and court practices focused on liquidation of assets rather than business recovery.

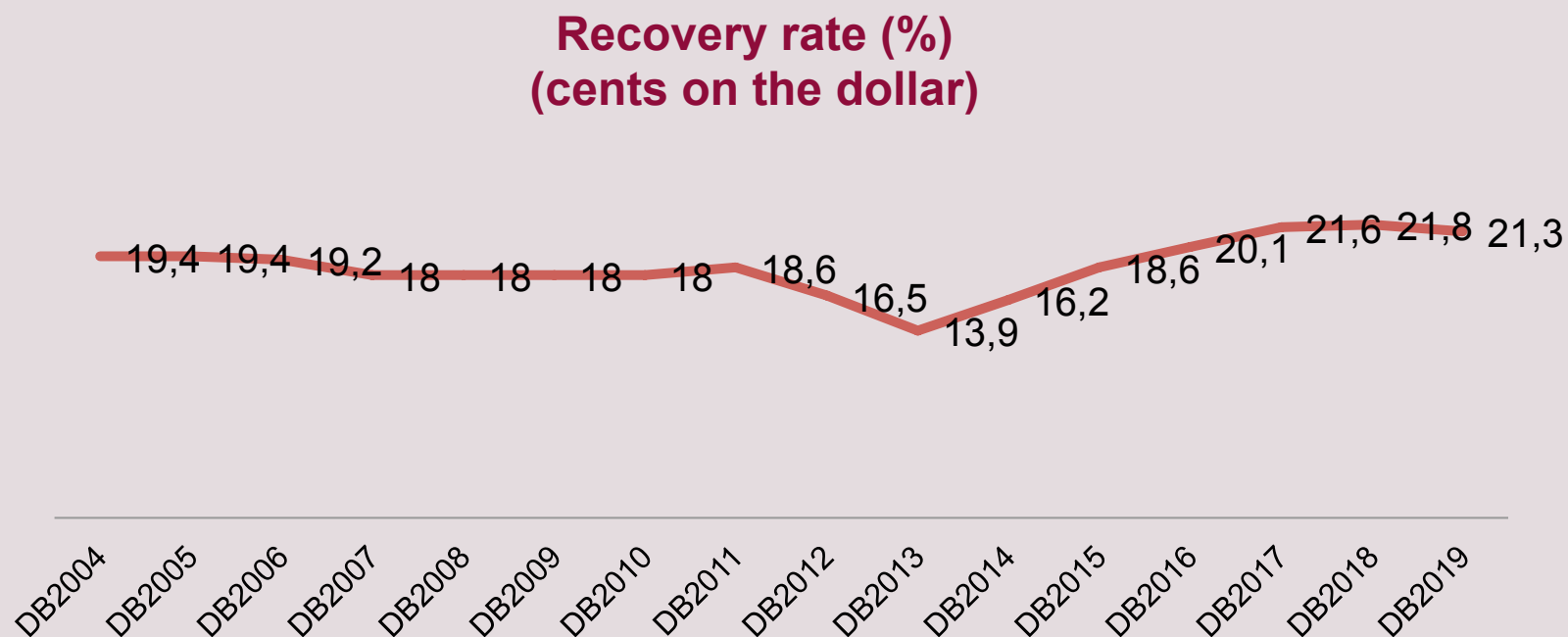
Third (current) Law 2014

- Insolvency Administrator replaces the Liquidation Team from previous laws.
- Revamping the role of judge and other state agencies in the bankruptcy procedures.
- Mediation before the proceedings
- Introducing new working mechanism of creditors' meeting
- Streamlining the proceedings
- Fast-track proceeding
- Extending the jurisdiction for district courts.

Initial results from the current Law 2014 of Vietnam

Time (2004-2019)	Cost (2004-2019)
5 years (no change)	14,5% (no change)

Doing Business – World Bank



Insolvency Administrator: A reformative feature of the Bankruptcy Law 2014



Insolvency Administrator in Vietnam

- '*Insolvency Administrator*' (IA) or also called as '*Asset management person*' or '*Quan tai vien*' is an individual specialized in management and liquidation of the assets of an insolvent entity during the process of bankruptcy settlement.
- This profession is brand new in Vietnam, even the Vietnamese word '*Quan tai vien*' is also the new word in Vietnamese dictionary.
- Similar to many civil law countries, Vietnam does not have the legal framework on trust. However, the IA as a private trustee is recognized.

Insolvency Administrator in Vietnam

JUDGE (Law 2004)	JUDGE (Law 2014)
<i>No specific provision on tasks, powers and responsibilities</i>	1. Collect and verify documents and evidences related to the request for initiation of bankruptcy process if necessary. 2. Make the Decision on the initiation of bankruptcy process or the refusal to initiate bankruptcy process. 3. Make the Decision on appointing or replacing the Insolvency Administrator and/or the Asset Management Enterprise. 4. Supervise the Insolvency Administrator and/or the Asset Management Enterprise. 5. Decide to conduct an audit of the insolvent entity if necessary. 6. Make the Decision on the liquidation of the assets of the insolvent entity after the Decision on the initiation of bankruptcy process in order to cover the cost of bankruptcy. 7. Take temporary emergency measures according to the regulations.

Insolvency Administrator in Vietnam

JUDGE (Law 2004)	JUDGE (Law 2014)
<i>No specific provision on tasks, powers and responsibilities</i>	8. Impose the prohibition against leaving the place on the representative of the insolvent entity and request the competent authorities to escort him/her according to the regulations. 9. Convene the creditors' meeting. 10. Make the Decision on approving the resolution of the creditors' meeting on the plan to resume business operation. 11. Make the Decision on suspending bankruptcy process. 12. Make the Decision on the declaration of bankruptcy of the insolvent entity. 13. Impose administrative penalties and/or request competent authorities to impose criminal penalties according to the regulations. 14. Refer to the bankruptcy settlements for the prior similar cases with the guidance of the Supreme People's Court. 15. Perform other tasks and powers according to the regulations.

Insolvency Administrator in Vietnam

	Asset management and liquidation teams (AMLT) under Law 2004	Insolvency Administrators (IAs) under Law 2014
Members	An AMLT is composed of: 1. An executor of the judgment-executing agency of the same level as team leader; 2. An official of the court; 3. A representative of the creditor; 4. The lawful representative of the enterprise or cooperative subject to the opening of bankruptcy procedures; 5. In cases where it is necessary that the representative of the trade union organization, the laborers' representative, the representative of professional agencies join the property-managing and -liquidating team, the judge shall consider and decide thereon.	The judge will receive the request for bankruptcy procedure, appoint an '<i>Insolvency administrator</i>' and supervise his work. The IA can be appointed from: a) <i>A lawyer;</i> b) <i>An auditor;</i> c) <i>A person having a bachelor degree in law, economics, accounting or banking and 05 years of experience or more in his/her field.</i> The IA is required: a) <i>Be capable of civil acts;</i> b) <i>Have ethical qualities, sense of responsibility, integrity and objectivity;</i> c) <i>Have practising certificate of insolvency administrator.</i> The IA cannot be civil servants, criminally convicted persons. The IA must be granted the IA practicing certificate and then register with the Department of Justice as an individual IA (not working for Asset management and liquidation enterprise)

Insolvency Administrator in Vietnam

	AMLT under Law 2004	IAs under Law 2014
Tasks, powers and responsibilities	<i>To make the lists of available properties of the insolvent enterprises, cooperatives;</i> <i>To supervise and examine the use of properties of insolvent enterprises, cooperatives;</i> <i>To propose judges to decide on the application of provisional emergency measures to preserve the properties of enterprises, cooperatives in case of necessity;</i> <i>To make lists of creditors and debt amount payable to each creditor; the debtors and receivable debt amounts of the enterprises, cooperatives;</i>	1. Manage and supervise the business operation and asset liquidation of the insolvent entities as follows: - Collect, verify and manage the documents and evidence related to the business operation of the entities; <i>Draw up lists of assets, creditors and debtors;</i> - Preserve assets; prevent selling and/or giving asset without permission of the Judge; prevent dispersing and hiding assets; maximize the value of the entities' asset on selling and/or liquidating; <i>Supervise the business operation of the entities according to the regulations of the Law;</i> - Hire an individual or an organization according to the regulations of the Law; - Advise the Judge on selling the entities' assets in order to cover the cost of bankruptcy;

Insolvency Administrator in Vietnam

	AMLT under Law 2004	IAs under Law 2014
Tasks, powers and responsibilities	- To retrieve and manage properties, documents, accounting books and seals of the enterprises and/or cooperatives which are subject to the application of liquidation procedures; - To realize the plans on property division under decisions of judges; <i>To detect and propose judges to issue decisions to recover properties, property value or the difference of the value of the properties of enterprises or cooperatives subject to the application of liquidation procedures, which were sold or transferred illegally;</i> <i>To execute the judges' decisions to auction properties of the enterprises, cooperatives subject to the application of liquidation procedures strictly according to law provisions on auction;</i>	- Sell the entities' assets in accordance with the Judge's decision in order to cover the cost of bankruptcy; <i>Valuate and liquidate assets according to the regulations of this Law;</i> send reports to civil execution authorities and notifications to involving entities on the asset liquidation of an appointed individual or organization; <i>Send the collected money to the bank accounts held by the People's Court or civil execution authorities.</i> 2. Represent the insolvent entity if the entity does not have any legal representative. 3. Make a report on assets, debts and the operation of the enterprise or cooperative participating in making plan for recovering the business operation of the insolvent entity.

Insolvency Administrator in Vietnam

	AMLT under Law 2004	IAs under Law 2014
Tasks, powers and responsibilities	<i>To deposit money amounts collected from debtors and from auction of properties of the enterprises, cooperatives into accounts opened at banks;</i> - To execute other decisions of judges in the course of carrying out the bankruptcy procedures.	4. Advise the Judge to do the followings: - Collect evidences; <i>Declare that a transaction is invalid and take back the entities' assets which are illegally sold or given;</i> <i>Take temporary emergency measures;</i> impose administrative penalties; transfer dossier to competent authorities for imposing criminal penalties according to the regulations of the Law. 5. Receive payment and professional liability insurance according to the regulations of the Law. 6. Make a report on the performance of the tasks and powers at the request of the Judge and/or civil execution authorities; Take liability before the Judge, civil execution authorities and the Law for the performance of the tasks and powers.

Steps to register to practice IA as an individual

1

Applying for Insolvency Administrator Practising Certificate at Ministry of Justice

2

Registering to practice Insolvency Administrator at provincial Department of Justice

Insolvency Administrator in Vietnam

- **1400** IAs have been granted Insolvency Administrator Practising Certificate. **261** IAs have been instructed.
- The IAs can be solo practice or a member of an asset management and liquidation partnership or sole proprietorship entity (so called as asset management and liquidation enterprises).
- **40** asset management and liquidation enterprises in 14 provinces.

Current challenges: Insolvency Administrator in Vietnam

- Many state agencies, banks, financial institutions and many businesses do not know this profession. They concern to cooperate with the IAs. Therefore, IAs have to seek supports from the Judge in order to work with other agencies.
- There are lacking business experienced IAs for re-structuring of the insolvent businesses.
- Some regulations are conflict with the Law on Bankruptcy 2014. Therefore, sometimes the Courts or IAs have to wait guidelines from the Government's agencies or Supreme People's Court.
- There are lacking trainings and guidelines on professional skills for IAs in some specific cases, such as insolvency of financial institutions, cross-border bankruptcy.

Endeavours of Vietnamese Government and Supreme People's Court to improve implementation of Bankruptcy Law 2014

Endeavours of Vietnamese Government and Supreme People's Court to improve implementation of Bankruptcy Law 2014

- Annual Government's resolutions on improving business environment based on World Bank's Doing Business Report since 2014. The Government aims to reduce the time for practical bankruptcy settlement from 5 years to 2,5 years. Government's Resolutions request relevant agencies to cooperate with each other to support the Courts and IAs.
- Supreme People's Court provides a number of guidelines, training courses on the bankruptcy procedures under the Law 2014 to the judges; applies e-announcements in bankruptcy process; changes method of case management in relation to bankruptcy process.
- Ministry of Justice is focusing development of quantity and quality of Insolvency Administrators in the country-wide, such as providing professional training courses, drafting code of conducts, removing practical difficulties, etc.

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**Thank you for
your attention**

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