



JULY 2020

CORPORATE INSOLVENCY REGIME IN THE ASEAN REGION: FOCUS ON CAMBODIA, LAO PDR & VIETNAM

A DFDL Insolvency Q&A Publication Series

Series 2

Question No.1	What is the primary legislation which governs corporate insolvency? And, are there any other laws in force dealing with corporate insolvency?
CAMBODIA	<p>The primary legislation governing corporate insolvency in Cambodia is the Insolvency Law enacted on 16 October 2007 and promulgated on 7 December 2007 (“Law”). There are no other current Cambodian regulations that deal with corporate insolvency, except where the corporate entity is also regulated under banking, insurance or securities laws in Cambodia.</p> <p>Article 6(1) of the Law states that it applies to business persons, partnerships or other legal entities formed under the laws of Cambodia, or foreign-registered entities which own assets in Cambodia.</p>
LAO PDR	<p>The primary legislation governing corporate rehabilitation and bankruptcy is the new Enterprise Rehabilitation and Bankruptcy Law (№ 75/NA, 26 December 2019) (the “Bankruptcy Law”).</p> <p>The Bankruptcy Law posted on the official gazette on 25 May 2020 and came into effect 15 days thereafter, replacing the previous Law on Enterprise Bankruptcy (№ 06/NA, 14 October 1994).</p> <p>Voluntary enterprise liquidation/winding up is handled via the Enterprise Law (№ 46/NA, 26 December 2013) but is not addressed below.</p>
VIETNAM	<p>The primary legislation concerning corporate insolvency is the Law on Bankruptcy of Vietnam No. 51/2014/QH14 of the National Assembly of Vietnam dated 19 June 2014 (The “Bankruptcy Law”).</p> <p>The Civil Code No. 91/2015/QH13 of the Vietnamese National Assembly dated 24 November 2015 (the “Civil Code”) specifies that the bankruptcy of legal entities be conducted in accordance with the Bankruptcy Law. Additionally, the Law on Enterprises No. 68/2014/QH13 of the National Assembly of Vietnam dated 26 November 2014 (the “Enterprise Law”) regulates the rights and obligations of companies’ individuals (i.e. members of limited companies with two or more members; shareholders, members of the Board of Directors of joint stock companies etc.) when preparing a decision or petition for bankruptcy or insolvency of the company.</p>
Question No. 2	Is there any conflict of provisions in the corporate insolvency laws?
CAMBODIA	<p>While there are no conflict provisions, Article 6(3) of the Law states that insolvency proceedings shall not be commenced under the Law against any debtor or creditor that is also regulated under the Law on Banking and Financial Institutions, Law on Insurance or Law on Non-Government Securities, as mentioned above in item 1.</p>

LAO PDR	The Bankruptcy Law repeals in its entirety the previous 1994 Law on Enterprise Bankruptcy so there are no conflicting provisions.
VIETNAM	No. Both the Civil Code and the Enterprise Law refer to the Bankruptcy Law in relation to insolvency proceedings.
Question No. 3	Who can initiate a corporate rehabilitation proceeding under the insolvency laws?
CAMBODIA	<p>Articles 7 (1) and 8 (1) of the Law allow for either the creditor or debtor, a director of the company or a public prosecutor to initiate corporate insolvency proceedings against a covered corporate entity. The Law does not specifically carve out corporate rehabilitation proceedings for covered corporate entities.</p> <p>In cases where a creditor or debtor is initiating insolvency proceedings, the failure of a debtor to meet one or more valid and mature obligations are grounds for filing the petition where the debt obligation exceeds five million Riels (approximately USD 1,250) with respect to the debtor.</p> <p>In addition to the filing of a petition for insolvency against a covered corporate entity, a debtor may submit a “plan of compromise” at the same time the insolvency petition is filed (before an administrator is assigned to the case), with cooperation from any relevant creditors. The plan of compromise is essentially an option to reach a compromise with the relevant creditors so that the debtor’s business may continue or be rehabilitated. The court maintains the discretion to take into account the plan of compromise in future creditors’ meetings. Depending on the mutual cooperation of the debtor and creditors, an approved plan of compromise has the procedural effect of terminating the insolvency proceedings.</p> <p>Without creditor approval, no plan of compromise can be implemented. Where the proposed plan of compromise is fully rejected by the creditors, liquidation of the entity will commence.</p> <p>We further note that under Article 16 of the Law, insolvency proceedings will not be opened unless the assets of the debtor are sufficient to cover the costs of the proceedings, or a sufficient amount of money is advanced by a related person.</p>
LAO PDR	<p>Corporate rehabilitation or bankruptcy proceedings can be initiated by the following:</p> <ul style="list-style-type: none"> ▪ The corporate entity itself; ▪ The partners or shareholders of the corporate entity representing at least 20% of total voting shares; ▪ Creditors which have a debt of at least 20,000,000 LAK and have notified the corporate entity at least three times to repay the debt, each notification being for at least 20 days and which notice has been acknowledged by the corporate entity; or

- Employees or trade unions where the corporate entity has failed to pay salaries and/or wages for a period of three continuous months.

Where creditors or employees/trade unions petition for bankruptcy an enterprise may request the court to consider rehabilitation as a counterclaim.

Once the rehabilitation petition is accepted by the court, case documents will be prepared by the court clerk and a judge appointed. The judge will convene the first meeting of creditors within 30 days, at which meeting, an asset supervisor will also be appointed and notices will be issued to creditors. The debtor enterprise is required to provide detailed information to the asset supervisor and thereafter the asset supervisor is to audit the enterprise and its assets. Within 90 days of the court approved date of the creditors meeting, the debtor enterprise and the asset supervisor are required to formulate a rehabilitation plan for approval by the court and creditors committee. The asset supervisor will convene a meeting of creditors within 7 days of the submission of the plan to the court and if approved, it will be sent to the court to issue an order for implementation of the rehabilitation plan. The rehabilitation plan will be performed in accordance with the details of the plan approved by the court but shall not exceed 3 years from the date of issuance of the order for implementation.

VIETNAM

A bankruptcy proceeding may be commenced by the following:

- An unsecured creditor or partially secured creditor has the right to file a petition for commencement of bankruptcy procedure upon the expiry of 3 months from the maturity date of a debt which an enterprise failed to perform the obligation to repay;
- Employees, the grassroots trade union (or the immediate higher grassroots trade union in a place where a grassroots trade union has not been established), have the right to file a petition for commencement of bankruptcy procedure upon the expiry of 3 months from the date when the obligation to pay wage and other debts to the employees was due and not performed by the enterprise;
- The legal representative of an enterprise has the obligation to file a petition for commencement of bankruptcy procedure when the enterprise becomes insolvent;
- The owner of a private enterprise, chairman of the board of management of a shareholding company, chairman of the members' council of a limited company with two or more members, owner of one member limited liability company or an unlimited partner of a partnership company has the obligation to file a petition for commencement of bankruptcy procedure when their enterprise becomes insolvent;
- A shareholder of a group of shareholders owning 20% or more of ordinary shares for at least 6 consecutive months has the right to file a petition for commencement of bankruptcy procedure when their shareholding company becomes insolvent. A shareholder or a group of shareholders owning less than 20% of ordinary shares for at least 6 consecutive months has the right to file a petition for commencement of bankruptcy procedure when their shareholding company becomes insolvent if it is so stipulated in the charter of the company;

A member of a cooperative or the legal representative of a member cooperative of an alliance of cooperative has the right to file a petition for commencement of bankruptcy procedure when the cooperative or the alliance of cooperative becomes insolvent.

CAMBODIA

Under Article 41 of the Law, if a plan of compromise is approved by the relevant creditors, assets may be sold either subject to or free from any encumbrances in accordance with the approved plan of compromise. However, under Article 19 of the Law, after the court opens the insolvency proceedings, the administrator may allow a secured creditor to enforce its security interest if the administrator determines that such action is in the best interest of the estate. Also, under Article 76 of the Law, a creditors' committee may be appointed and represented by both secured and unsecured creditors.

Article 45 of the Law sets out the approval process for the plan of compromise at a creditors' meeting and establishes three classes of voting rights for creditors in the following rank:

- (a) Creditors holding secured claims;
- (b) Creditors holding claims falling under state taxes whose notice is not filed; and
- (c) All other unsecured creditors.

We further note that creditors holding inadmissible claims have no voting rights on a plan of compromise. A plan of compromise requires the approval of each class of creditors, through an affirmative vote of creditors in each class holding not less than three-fourths of the claims of all creditors present at the meeting, or at least one class of creditors, through an affirmative vote of creditors in the class holding not less than three-fourths of the claims of all creditors present at the meeting. A secured creditor may vote for the portion of its claim that exceeds the value of the encumbered asset, and for the part that is regarded as an unsecured claim under the Law.

We further note that under Article 11 of the Law, once an administrator has been appointed, the administrator may also apply to the court for injunctive relief to freeze any relevant assets or seek a stay of action by secured or unsecured creditors against the debtor or the assets of the estate. Stays of action are effective from the opening and until the termination of the relevant insolvency proceeding.

For completeness, we note that under Article 57 of the Law, creditors' claims will be ranked according to the following order:

- (a) employee wages, administrator's remuneration and fees, administrative fees, and court fees; (b) secured claims, up to the higher of the value of the secured portion of the claim as determined under Article 26 of the Law or the relevant net proceeds from an effective sale of the encumbered asset (collateral);
- (b) state taxes whose notice is not filed; and
- (c) all other admissible unsecured claims.

	<p>We further note that for secured creditors rights upon the impact of a stay of action, secured creditors are entitled to have their claims satisfied according to the ranking set out above, unless the administrator deems it in the best interest of the estate to enforce their security interest. Article 47 of the Law further states that upon court sanction the plan of compromise, all creditors in the same class are treated equally, and no creditor will receive more than the full amount of their claim.</p> <p>Lastly, we note that the ranking of creditors is different under Article 64 of the Law on Banking and Financial Institutions (effective 18 November 1999) and Article 86 of the Law on Insurance (effective 4 August 2014). Under the Banking Law, the priority granted to employee wages falls to the third position and state taxes rise to second. Subordinated debts and equity type loans are the last on the priority ranking list. Under the Insurance Law, claims of insurance claimants and claims by insurance policyholders are ranked second and third, respectively.</p>
<p>LAO PDR</p>	<p>Liquidated debts will be distributed in the following order of priority:</p> <ol style="list-style-type: none"> 1. Salary/wages of workers (excluding director committees), including social security contributions; 2. Principal and interest on loans for use in the enterprise rehabilitation procedures; 3. Secured debts; 4. Debts to the State, such as, taxes, but which shall not be calculated for more than two years of payments due prior to undertaking the bankruptcy case proceedings; and 5. Unsecured debts. <p>If the assets of the corporate entity are insufficient to repay all debts on the same priority level, the debts shall be repaid at the same percentage.</p> <p>Secured creditors may also request the court to consider authorization of legal undertakings to secure the assets if they may be devalued, damaged or lost during the proceedings.</p>
<p>VIETNAM</p>	<p>Both secured and unsecured creditors have the right to demand that the enterprise fulfill repayment obligations. However, pursuant to the Bankruptcy Law, the secured creditors' rights take priority over those of unsecured creditors. While unsecured debts can only be settled after a judge issues a decision declaring the enterprise bankrupt, secured assets may be distributed to secured creditors in the following cases:</p> <ul style="list-style-type: none"> ▪ If some of the enterprise's assets are secured but not required for the implementation of business recovery procedures of the enterprise, then settlements for secured creditors will be in line with the time stated in the respective secured contract that has become due. As for a secured contract which has not become due, prior to declaring the enterprise bankrupt, the local court shall suspend the contract and settle the secured loan;

	<ul style="list-style-type: none"> ▪ The competent court provides that secured creditors will immediately be paid with the assets secured to the creditors if they are susceptible to damage or a severe decrease in value.
Question No. 5	<p>When can a receiver/liquidator be appointed? And, who can appoint a receiver under the applicable laws?</p>
CAMBODIA	<p>Upon filing of an insolvency petition by a debtor or creditor, an administrator may be appointed under Article 11 of the Law. Generally, this request for the appointment of an administrator is specified in the insolvency petition. The administrator is delegated by the court and has broad powers including managing the debtor’s business and receiving and selling relevant assets. The first creditors’ meeting is chaired by a judge with assistance by the administrator. Subsequent creditors’ meetings are generally convened by the administrator alone. The Law does not establish the specific roles of a “receiver” or “liquidator,” however, the administrator’s rights and duties under the Law are in line with such titles.</p> <p>Only a natural person may be appointed by the court as an administrator, and shall be considered an officer of the court owing a duty of allegiance only to the court. Article 70 of the Law requires the administrator to act with the care and diligence of a reasonable business person in similar circumstances. Further, the administrator is liable to the parties in the proceedings for any damage caused by the administrator’s failure to exercise the required care and diligence.</p>
LAO PDR	<p>Asset supervisors are appointed by the court. Asset supervisors are authorized to control, manage and administer the assets during bankruptcy and rehabilitation proceedings. Asset supervisors must be approved and licensed by the Ministry of Justice.</p>
VIETNAM	<p>An asset management officer or an asset management and liquidation firm is tasked with managing and liquidating the assets of an insolvent enterprise in the course of resolving the bankruptcy.</p> <p>If the court finds the petition for rehabilitation to be sufficient in form and substance, the court shall issue a decision to commence insolvency procedures from the date of accepting jurisdiction over a petition for commencement off bankruptcy. Within three working days from the date of issuing a decision to commence insolvency procedures, the judge must duly appoint an asset management officer or asset management and liquidation firm. The enterprise has the right to nominate the asset management officer or asset management and liquidation firm with the local court prior to commencement of insolvency procedures.</p> <p>Within seven days from the date of issuance of a decision declaring bankruptcy, the asset management officer or asset management and liquidation firm shall receive a written request to conduct liquidation of the respective enterprise’s assets. If the asset management officer or asset management and liquidation enterprises fails to liquidate assets after 2 years from the date of receipt of the written request, the asset management officer or asset management and liquidation enterprise must terminate the liquidation of assets and transfer all documents and assets of the bankrupt enterprise to the civil judgment enforcement office for resolution and liquidation of assets.</p>

Question No. 6	What are the protections available to a company during the corporate insolvency proceeding?
CAMBODIA	<p>Under Article 11 of the Law, once an administrator has been appointed in an insolvency proceeding, the administrator can apply to the court for injunctive or preservative relief to freeze assets or seek a stay of action by secured or unsecured creditors against the debtor or assets of the estate and depending on the relevant facts of the insolvency proceeding. This means that no legal action or proceeding against the debtor may proceed once insolvency proceedings have commenced. The court may also rule on its own motions for such injunctive or preservative relief.</p>
LAO PDR	<ul style="list-style-type: none"> ▪ Once an order to open a rehabilitation or bankruptcy proceeding has been issued by the court no proceedings or other actions may be initiated or continued against the debtor enterprise or its assets. ▪ Any case procedures, dispute resolution or criminal procedures will be suspended during the rehabilitation or bankruptcy proceedings, although such procedures may be merged into rehabilitation or bankruptcy proceedings in certain circumstances. ▪ Outstanding capital contributions must be paid up within 15 days of the date of issuance of an order to open the rehabilitation or bankruptcy proceedings. ▪ Contracts which were entered into prior to the commencement of rehabilitation proceedings which have not been fully performed may be terminated by the asset supervisor. If contested by the counterparty a submission can be made to the court requiring the continuation of the contact.
VIETNAM	<p>Protections available to a company during corporate insolvency proceedings under the Bankruptcy Law are as follows:</p> <ul style="list-style-type: none"> ▪ If a contract that (i) is effective and being performed or (ii) has yet to be performed, that may cause disadvantage to the enterprise, then the insolvent enterprise shall have the right to request the local court to issue a decision to temporarily suspend performance of the contract, except for settlements of secured loans that become due or be subject to risk of destruction or considerable decrease in value; ▪ Transactions of insolvent enterprises conducted within six months before the local courts issue a commencement decision will be deemed invalid if: (i) they relate to assignment of assets not at market rates; (ii) they involve conversion of unsecured debts into debts fully or partly secured by an enterprise's assets; (ii) they are payments or offsets which benefit a creditor in respect of a debt that has not yet become due or concern a sum larger than a debt which has become due; and ▪ After the local court has decided to commence bankruptcy procedures, creditors and an enterprise which has become insolvent may conduct clearance of obligations in respect of contracts entered into prior to the decision on commencing insolvency procedures. In the scenario where the parties have

	unequal asset obligations but the difference of the greater asset value belongs to the enterprise, the party contracting with the enterprise must pay the asset value difference in order for it to be incorporated into the asset portfolio of the enterprise.
Question No. 7	Does the law separately provide for the duties of directors and how does it pave with the existing laws?
CAMBODIA	<p>As mentioned in response 3, an individual director of a company may initiate an insolvency petition under the Law. Further, Article 9(3) of the Law states that a person who intentionally or with gross negligence, fails to discharge their duty to have a petition filed is personally liable to the debtor’s creditors for damages that result directly from such failure. If the duty falls on more than one person, all such persons, acting intentionally or with gross negligence, will be jointly and severally liable for damages that result directly from the failure to observe the duty.</p> <p>This is generally consistent with Article 289 of Cambodia’s Law on Commercial Enterprises (“LCE”) regulating the duty of care of directors and officers of companies and partnerships. Article 289 of the LCE in pertinent part provides that every director and officer in exercising their duties shall act honestly and in good faith with a view to the best interests of the company, and exercise the care, diligence and skill that a reasonably prudent person would in similar circumstances.</p> <p>The Law is silent on the relevant powers or duties of directors or officers once insolvency proceedings have commenced, apart from the general requirement to cooperate with the administrator in providing necessary information relating to the business of the debtor.</p>
LAO PDR	<p>There are general obligations on the debtor company which may be executed by the directors such as provision of information to the asset supervisors and implementation of and reporting on an approved rehabilitation plan.</p> <p>Representatives of the debtor enterprise (which may include its managing director or board of directors) are required to attend meetings of the creditors.</p>
VIETNAM	No. Vietnamese law does not separately provide specific duties for directors of an enterprise.

Question No. 8	Are there any restrictions on the power of directors with the onset of corporate insolvency?
CAMBODIA	Aside from the duty to initiate an insolvency proceeding under Article 9(3) of the Law, the Law is silent on specific restrictions for directors or officers of a corporate entity during an insolvency proceeding.
LAO PDR	<p>Yes:</p> <ul style="list-style-type: none"> ▪ If the assets supervisor deems that prior to the filing of the petition/request for the court to adjudicate on a bankruptcy declaration, that the directors (or owner or administrator) of debtor enterprise concealed accounting documents or assets, moved or transferred assets, increased debts unlawfully, entered into security agreements without security, cancelled or reduced the rights to claim receivables, then they will be prosecuted in accordance with law. ▪ In the event that the court issues an order to supervise assets, but the director (or owner or administrator) of the debtor enterprise continues to operate the business, accept credit or undertake any other actions without the authorization of the court or the assets supervisor, they shall be responsible for damages, have their rights to administer removed and be subject to other measures. ▪ In the event that the bankruptcy of the debtor enterprise is a result of mismanagement of the director (or owner or administrator), the relevant individuals may be subject to measures prohibiting them from being directors (or administrators) of any enterprise for a period of three years.
VIETNAM	<p>An enterprise may still continue its business operations but must be subject to supervision by the judge and the asset management officer or asset management and liquidation firm. From the commencement date of bankruptcy procedures, the insolvent enterprise shall be prohibited from:</p> <ul style="list-style-type: none"> ▪ Concealing or disposing of assets; ▪ Paying unsecured debts, except for those arising after commencement of bankruptcy procedures and paying wages to employees; ▪ Abandoning or reducing rights to claim debts; and ▪ Converting unsecured debts into debts secured by the enterprise's assets. <p>If the judge finds that the directors of the enterprise are incapable of managing the enterprise or there are signs of violations, the judge may issue a decision to replace the legal representative of the enterprise as requested at the creditors' meeting or by the asset management officer or asset management and liquidation firm.</p>

Question No. 9	Is there any difference between financial credit and operational credit?
CAMBODIA	The Law does not distinguish between financial credit and operational credit. Nonetheless, Article 87 of Cambodia's Labour Law (13 March 1997; amended on 20 July 2007 and 26 June 2018) does not excuse an employer from making any statutory payments to employees upon the dissolution or closing of an enterprise.
LAO PDR	No, there is no difference between financial credit and operational credit in the Bankruptcy Law.
VIETNAM	<p>No. These credits are not clearly clarified under the Bankruptcy Law.</p> <p>Where a judge issues a decision declaring bankruptcy, the assets of the enterprise shall be distributed in the following order:</p> <ul style="list-style-type: none"> ▪ Secured debts in particular: <ul style="list-style-type: none"> (a) Employee wages, administrator's remuneration and fees, administrative fees, and court fees; (b) secured claims, up to the higher of the value of the secured portion of the claim as determined under Article 26 of the Law or the relevant net proceeds from an effective sale of the encumbered asset (collateral); (b) If the value of the collateral is not enough to cover the debt, the remaining value of the debt shall be paid during the liquidation of the assets of the insolvent entity; if the value of the collateral is higher than the debt, the difference shall be included in the value of the assets of the insolvent entity; ▪ Bankruptcy costs; ▪ Unpaid wages, severance allowances, social insurance and health insurance of the employees and other benefits in accordance with the executed labor contracts and collective labor agreement; ▪ Debts arising subsequent to the commencement of the bankruptcy procedure which serve the purpose of business recovery of the enterprise; ▪ Financial obligations to the state; unsecured debts payable to the creditors named in the list of creditors; secured debts which remain unpaid due to the value of the assets being insufficient to repay them.

	<p>Under the Bankruptcy Law, bankruptcy costs mean amount payable for resolving bankruptcy, including costs of the asset management officer or asset management and liquidation enterprise, audit costs, cost of newspaper releases. Although the bankruptcy costs and payments relating to employees seem to be operational credit under common knowledge, there is not any clear recognition about it on the Bankruptcy law. There is not any regulation which specifies on operational credit or financial credit. The Bankruptcy law just refer to <u>debts</u> of secured and unsecured creditors, and <u>wages and other debts</u> paid to employees. The order is just listed for the purpose of asset distribution of the enterprise after a decision declaring bankruptcy issued.</p>
Question No. 10	Is there a specific time-frame for the corporate insolvency or winding-up proceedings to be concluded under the applicable laws?
CAMBODIA	<p>There is no specific time-frame requirement under the Law for the conclusion of winding-up proceedings. However, under Article 12 of the Law, once a petition to initiate an insolvency proceeding has been filed, the court should hold a hearing on the opening of insolvency proceedings within 15 days if the petition is filed by the debtor, or within 30 days if the petition is filed by a creditor. After the hearing, the court has 14 days to rule on the opening or dismissal of insolvency proceedings. However, in between the time of the filing of the petition to the issuance of a ruling on whether to open insolvency proceedings, the court will, upon the written application of the debtor, any creditor, the public prosecutor or the director of companies, issue a ruling to appoint an administrator.</p> <p>Further, under the Law as mentioned in response 3, either the debtor or administrator may propose a plan of compromise to reach a compromise with the relevant creditors so that the debtor’s business may continue or be rehabilitated. If no plan of compromise is proposed by the debtor at the first creditors’ meeting or if the debtor’s plan of compromise is not approved at that meeting, then the creditors may adjourn the meeting by a maximum of 60 days, during which period creditors having at least one-fifth of the value of claims have an opportunity to propose a plan of compromise.</p> <p>Regardless of who prepares the plan of compromise, a proposed plan of compromise must be filed with the court no later than seven days before the date of the relevant creditors’ meeting where the proposed plan will be considered.</p> <p>The ultimate timeframe for conclusion and resolution of the insolvency proceedings is dependent on a case-by-case basis and can be at the discretion of the administrator and/or the court and other circumstances.</p>
LAO PDR	<p>Yes, the rehabilitation plan must be implemented in the timeframe set out in the plan approved by the court but cannot exceed three years from the date on which the court issued the order to rehabilitate the enterprise.</p> <p>For a bankruptcy declaration, the judge has between 15-20 days after issuance of an order to open bankruptcy proceedings or from receipt of the report of the asset supervisor/ resolution of the meeting creditors, to issue an order for bankruptcy declaration. An appeal timeframe of 20 days from receipt of the decision is set and the appeal court must be complete within 60 days of the judge having received the case documentation. Within 10 days of the final declaration of bankruptcy the court is to announce through the media and via delivery to various parties the bankruptcy declaration.</p>

<p>VIETNAM</p>	<p>The timeframe for settlement of insolvency proceedings is up to 120 days, including:</p> <ul style="list-style-type: none"> ▪ The local court issues a decision on whether to commence bankruptcy procedures: within 30 days from the date of accepting the insolvency petition; ▪ Listing of creditors and debtors: up to 60 days after the court issues the decision to commence insolvency procedures; ▪ Complaint or resolution of complaints about the creditors and debtors list: within 15 days from finalization of the list; and ▪ The meeting of creditors: 15 days from the date on which the list of creditors and debtors is finalized. <p>Additionally, summary procedures shall be applied, If the insolvent enterprise has no funds or other assets to pay bankruptcy fees or to make advance payment of bankruptcy expenses, or has no assets to pay bankruptcy expenses after a court has accepted jurisdiction over a petition to commence insolvency procedures. The local court shall send notice to relevant participants that it will resolve the case in accordance with summary procedures, then the people’s court shall declare that the enterprise bankrupt within 30 days from the date on which the notice sent.</p>
<p>Question No. 11</p>	<p>Is the concept of a suspicion/suspension period recognized?</p>
<p>CAMBODIA</p>	<p>Yes, the Law does recognize the concept of suspicion period. Article 32 of the Law states that transactions of the debtor can be pronounced void, which are as follows:</p> <ul style="list-style-type: none"> ▪ a transaction entered into by the debtor with the intent to defraud creditors by placing the debtor's assets beyond the reach of creditors who may seek to recover claims owed by the debtor; ▪ a transaction effected within three (3) years prior to the opening of insolvency proceedings for which no consideration was received by the debtor in return, except for ordinary transactions in favor of the debtor's spouse or relatives of direct descent or ascent; ▪ a transaction effected within one (1) year prior to the opening of insolvency proceedings in which the value of the debtor's obligation considerably exceeded the value of the other party's obligation; ▪ a transaction effected within one (1) year prior to the opening of insolvency proceedings in which the debtor discharged a debt which was not due, or provided new or additional security for a debt, and in which the other party to the transaction is a related person; ▪ a transaction effected within six (6) months prior to the opening of insolvency proceedings in which the debtor discharged a debt which was not due, or provided new or additional security for a debt; and

	<ul style="list-style-type: none"> ▪ a transaction effected within one (1) year prior to the opening of insolvency proceedings in which the debtor discharged a debt which was not due, or provided new security, or granted a security right, for a debt. <p>Similar to the concept of a suspension period, Article 23 of the Law allows for the administrator to represent the debtor and manage the debtor’s business and the business operations, regardless of whether the business is in the process of winding up.</p>
<p>LAO PDR</p>	<p>Yes, in rehabilitation proceedings the asset supervisor may request the court to consider to declare null and void the following actions which have been undertaken within 1 year of the filing of the petition:</p> <ul style="list-style-type: none"> ▪ Transfer or assignment of assets of the debtor enterprise to creditors or other individuals; ▪ Change of unsecured debts to secured debts; ▪ Settlement of debts with any creditor prior to its term; ▪ Sale of assets of the debtor enterprise for less than the market value; ▪ Waiver of rights to demand receivables; ▪ Acknowledgment of unreal debt or excess debt; and ▪ Other actions which benefit any creditor or individual. <p>During the rehabilitation/bankruptcy proceedings the asset supervisor may impose measures to preserve the assets of the enterprise and protect the rights of the creditors.</p>
<p>VIETNAM</p>	<p>The concept of a suspicion period is recognized under the Bankruptcy Law.</p> <p>During the suspicion period of six months from the local court issuing a decision to commence bankruptcy procedures, transactions shall be deemed invalid if they fall into any one of the following:</p> <ul style="list-style-type: none"> ▪ The transaction is related to asset assignment not made at market rates; ▪ Conversion of an unsecured debt into a debt partly or wholly secured by the assets of the enterprise; ▪ Payment or offset which benefits a creditor in respect of a debt that has not yet become due or concerns a sum larger than the overdue debt;

	<ul style="list-style-type: none"> ▪ Donation of the assets; ▪ The transaction is outside the purposes of the enterprise's business operations; or ▪ Other transactions for the purpose of disposing the enterprise's assets. <p>Transactions of an insolvent enterprise described above conducted with related parties within 18 months prior to the decision to commence bankruptcy procedures would be deemed invalid.</p> <p>The enterprise may still continue its business operations (except for engaging in certain prohibited transactions) from the decision to initiate bankruptcy procedures up until the enterprise is declared bankrupt. The enterprise must cease its operations from that point. Therefore, the Bankruptcy Law does not contemplate the concept of a suspension period.</p>
Question No. 12	When does a corporate insolvency proceeding transition to a winding-up process?
CAMBODIA	Under the Law, there is no compulsory order or process that requires that a restructuring be attempted before a liquidation. If the debtor or its creditors seek a restructuring, it will be necessary for them to submit a plan of compromise as part of the insolvency proceeding. However, a plan of compromise is not mandatory and, in the absence of such a plan, the administrator will proceed to liquidate the debtor. Specifically, presenting a plan of compromise under the Law is only possible once the insolvency proceedings have commenced.
LAO PDR	Once a declaration of the court has been made on enterprise bankruptcy the decision is referred to the Judgment Enforcement Authority for implementation. The Judgment Enforcement Authority is responsible for the collection of assets for distribution. The creditors' committee has the right to monitor and inspect the liquidation of debts. Once the Judgment Enforcement Authority has completed the liquidation, a proposal shall be made to the court to issue an order to close liquidation proceedings.
VIETNAM	The transition from corporate insolvency to winding up proceedings begins when the local court declares the enterprise bankrupt.

Question No. 13	Is there a dedicated regulator and a dedicated court or tribunal for insolvency matters?
CAMBODIA	No, there is no dedicated regulator or court/tribunal for insolvency proceedings in Cambodia. Petitions for insolvency are initiated at the general trial level at the courts of first instance in the jurisdiction where the corporate debtor is located. The courts of first instance hear all types of cases, and are not specific to insolvency proceedings.
LAO PDR	There is no dedicated regulator or court for insolvency matters. The commercial chamber of the Provincial and Capital People’s Courts where the registered office of the enterprise is located has jurisdiction over rehabilitation and bankruptcy proceedings.
VIETNAM	No. Provincial courts and level-district courts have jurisdiction to resolve insolvency cases as well as other commercial disputes.
Question No. 14	Does the law governing insolvency proceedings provide for personal insolvency and bankruptcy proceedings?
CAMBODIA	Article 3 of the Law states that it governs businesspersons and legal entities that own assets in Cambodia. There is no definition provided for “businessperson” but generally these can be sole proprietorships or natural persons engaged in business.
LAO PDR	No, the current Bankruptcy Law does not govern personal insolvency it relates to enterprises being a limited company, a partnership, public company, State owned enterprise or a co-operative, but is not applicable to commercial banks or financial institutions. There are also specific provisions dealing micro and small-scale enterprises.
VIETNAM	No. The Bankruptcy Law does not regulate personal insolvency and bankruptcy proceedings.

Question No. 15	<p style="text-align: center;">Is the concept of transnational or cross-border insolvency recognized? And, are there separate provisions dealing with cross-border insolvency?</p>
<p>CAMBODIA</p>	<p>Articles 3 and 6(2) of the Law govern insolvency proceedings with corporate entities having assets located in Cambodia. We note that once the Law applies to a domestic debtor, there is no express limitation under the Law that would prevent an administrator from subjecting foreign assets of a domestic debtor to the insolvency proceeding under the Law.</p> <p>However, under Article 199(d) of the Code of Civil Procedure of Cambodia (effective 6 July 2006), foreign court judgments are not enforceable in Cambodia unless amongst other requirements, there is a guarantee of reciprocity between Cambodia and the foreign country in which the court is based.</p> <p>We also note that Cambodia has not adopted the UNCITRAL Model Law on Cross-border Insolvency (1997) or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018).</p>
<p>LAO PDR</p>	<p>The Lao PDR is not a signatory to any treaties on international insolvency nor are there separate provisions in the Bankruptcy Law dealing with cross-border insolvency.</p> <p>Foreign judgments with respect to insolvency proceedings in other countries would need to be enforced in the Lao PDR in accordance with the Civil Procedure Law (№ 13/NA, 4 July 2012) which provides for the recognition of foreign judgments subject to certain conditions.</p>
<p>VIETNAM</p>	<p>Yes. The concept of transnational or cross-border insolvency is recognized under the Bankruptcy Law.</p> <p>Bankruptcy procedures involving overseas assets or participants must comply with the Bankruptcy Law. During the resolution of bankruptcy cases involving foreign elements, the local courts shall follow judicial mandate procedures in accordance with mutual judicial assistance agreements to which Vietnam is a contracting party or on the principle of reciprocity. Judicial mandate procedures shall be conducted in accordance with the laws on civil procedure and based on mutual judicial assistance.</p> <p>The recognition and enforcement of a decision on the resolution of bankruptcy issued by a foreign court shall be implemented in accordance with mutual judicial assistance agreements to which Vietnam is a contracting party and other regulations on mutual judicial assistance.</p>

KEY CONTACTS

If you have any questions or would like to know to more about the insolvency regime in the respective jurisdictions, please contact:

CAMBODIA



Chris Robinson

Partner, Co-Head of the Regional
Restructuring & Insolvency Practice
chris.robinson@dfdl.com

LAO PDR



Kristy Newby

Managing Director of Lao PDR
kristy.newby@dfdl.com

VIETNAM



Hoang Phong Anh

Partner, Vietnam
phonganh.hoang@dfdl.com

EXCELLENCE · CREATIVITY · TRUST

Since 1994

BANGLADESH | CAMBODIA* | INDONESIA* | LAO PDR | MYANMAR | PHILIPPINES* | SINGAPORE | THAILAND | VIETNAM

[†]DFDL collaborating firms