

# Lao PDR Insolvency Regime Key Questions & Answers

July 2020



NO.	QUESTIONS	ANSWERS
1.	<p><b>What is the primary legislation which governs corporate insolvency?</b></p> <p><b>And, are there any other laws in force dealing with corporate insolvency?</b></p>	<p>The primary legislation governing corporate rehabilitation and bankruptcy is the new Enterprise Rehabilitation and Bankruptcy Law (№ 75/NA, 26 December 2019) (the “<b>Bankruptcy Law</b>”).</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>
2.	<p><b>Is there any conflict provisions in the corporate insolvency laws?</b></p>	<p>The Bankruptcy Law repeals in its entirety the previous 1994 Law on Enterprise Bankruptcy so there are no conflicting provisions.</p>
3.	<p><b>Who can initiate a corporate rehabilitation proceeding under the insolvency laws?</b></p>	<p>Corporate rehabilitation or bankruptcy proceedings can be initiated by the following:</p> <ul style="list-style-type: none"> <li>▪ The corporate entity itself;</li> <li>▪ The partners or shareholders of the corporate entity representing at least 20% of total voting shares;</li> <li>▪ 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</li> <li>▪ Employees or trade unions where the corporate entity has failed to pay salaries and/or wages for a period of three continuous months.</li> </ul> <p>Where creditors or employees/trade unions petition for bankruptcy an enterprise may request the court to consider rehabilitation as a counterclaim.</p> <p>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</p>

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		<p>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.</p>
4.	<p><b>What are the rights of secured vs. unsecured creditors for corporate insolvency proceeding in?</b></p>	<p>Liquidated debts will be distributed in the following order of priority:</p> <ol style="list-style-type: none"> <li>1. Salary/wages of workers (excluding director committees), including social security contributions;</li> <li>2. Principal and interest on loans for use in the enterprise rehabilitation procedures;</li> <li>3. Secured debts;</li> <li>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</li> <li>5. Unsecured debts.</li> </ol> <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>
5.	<p><b>When can a receiver/liquidator be appointed?</b></p> <p><b>And, who can appoint a receiver under the applicable laws?</b></p>	<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>
6.	<p><b>What are the protections available to a company during the corporate insolvency proceedings?</b></p>	<ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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.</li> </ul>

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		<ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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.</li> </ul>
7.	<p><b>Does the law separately provide for duties of directors and how does it pave with the existing laws?</b></p>	<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>
8.	<p><b>Are there any restrictions on the power of directors with the onset of corporate insolvency?</b></p>	<p>Yes:</p> <ul style="list-style-type: none"> <li>▪ 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 prosecuted in accordance with law.</li> <li>▪ 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.</li> <li>▪ 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.</li> </ul>
9.	<p><b>Is the difference between financial credit and operational credit?</b></p>	<p>No, there is no difference between financial credit and operational credit in the Bankruptcy Law.</p>

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10.	<p><b>Is there a specific time-frame for the corporate insolvency or winding-up proceedings to be concluded under the applicable laws?</b></p>	<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>
11.	<p><b>Is the concept of a suspicion/suspension period recognized?</b></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"> <li>▪ Transfer or assignment of assets of the debtor enterprise to creditors or other individuals;</li> <li>▪ Change of unsecured debts to secured debts;</li> <li>▪ Settlement of debts with any creditor prior to its term;</li> <li>▪ Sale of assets of the debtor enterprise for less than the market value;</li> <li>▪ Waiver of rights to demand receivables;</li> <li>▪ Acknowledgment of unreal debt or excess debt; and</li> <li>▪ Other actions which benefit any creditor or individual.</li> </ul> <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>
12.	<p><b>When does a corporate insolvency proceeding transition to a winding up process?</b></p>	<p>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.</p>

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13.	<b>Does your jurisdiction have a dedicated regulator and a dedicated court or tribunal for the purposes of insolvency matters?</b>	<p>There is no dedicated regulator or court for insolvency matters.</p> <p>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.</p>
14.	<b>Does the law governing insolvency proceeding in your jurisdiction provide for personal insolvency and bankruptcy proceeding?</b>	<p>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.</p>
15.	<p><b>Is the concept of transnational or cross-border insolvency recognized in your jurisdiction?</b></p> <p><b>And, are there separate provisions dealing with cross-border insolvency?</b></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 (No 13/NA, 4 July 2012) which provides for the recognition of foreign judgments subject to certain conditions.</p>

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