



**VIII CONSTITUTIONAL GOVERNMENT  
DEMOCRATIC REPUBLIC OF TIMOR-LESTE**

**DRAFT LAW NO. .../2022  
... of ...**

**LEGISLATIVE AUTHORISATION IN THE AREA OF COMPANY  
AND INSOLVENCY**

**Explanatory of the Memorandum**

The drafting of a Recovery and Insolvency Code as an essential element for the growth of the economic fabric and investment in the country has been a constant objective since the VI Constitutional Government, which has already developed studies and projects in this regard.

The VIII Constitutional Government, aware of the need to finalise the process, made the drafting of a modern and adjusted Recovery and Insolvency Law one of its objectives. The Economic Recovery Plan of the Government, which aims to transform the foundations of the Timorese economy to increase the resilience and growth potential of the Country as a modern and developed economy in the international context. It has also highlighted the need to produce adequate legislation to deal with the situations of companies that face difficulties about financial situations which that must economically viable.

Besides this, the imminent accession of Timor-Leste to the World Trade Organization, as well as the Country's integration in the Association of Southeast Asian Nations, makes the creation of a legal framework in this matter essential and responds to the urgent needs in legislative matters and to the commitments assumed by the Country in the international scope.

Although the Indonesian Insolvency Law (Law no. 4/1998) remains in force, its applicability is purely formal. There are no known insolvency cases in the Timorese Courts since the country's independence. In itself, this outdatedness of the current legal framework would be sufficient grounds for its revision.

In short, it is fundamental to establish a regime that increases the guarantees for entrepreneurs and investors, without sacrificing the creditors, and that allows for the orderly withdrawal of insolvent companies from the market and the creation of the conditions for the recovery of companies in crisis when this is feasible.

In this regard, this draft law authorises the Government to approve a Recovery and Insolvency Code and establishes the bases, rules and principles that should be included in this special process.

The Recovery and Insolvency Code will be focused on the vitalisation of the business sector, through the restructuring and/or elimination of non-viable companies that tend to contaminate the "health" of the economy, offering two alternative ways out: (1) a process of financial recovery of the insolvent company or entrepreneur in difficulties in the fulfilment of its obligations, but which is viable for the exercise of economic activity; or (2) a process of universal liquidation of the assets of companies that are not economically viable.

Provision will also be made for the possibility of rehabilitating sole proprietors in the event that the insolvency is fortuitous and not intentional and there is a set of assets that will be excluded from the insolvent estate as they are essential to the insolvent's subsistence. This possibility of rehabilitating insolvent sole proprietorships for economic activity is effected through an incident of discharge from remaining liabilities which, by imposing on them duties of diligence in settling their credits for a set period of time, allows them, after the expiry of that period, to be released from all debts that cannot be settled and to resume an active role in economic activity without the constraints of the past.

It also provides for an incident of classification of insolvency as fortuitous or wilful, reserving for wilful insolvency the possibility for the Judge to apply to the debtor, and/or to its directors, ancillary sanctions aimed at preventing it from continuing to carry out activities that are harmful to creditors and to the normal functioning of the market, and to hold it responsible for the consequences of its wilful acts.

In this part, this legislative authorisation did not include the possibility of imposing sanctions of disqualification from exercising a trade or holding certain positions in corporate bodies, as it was understood that this could represent a restriction on the right to "freely choose the profession", provided for in Article 50(1) of the Securities Code. This could represent a restriction to the right "to freely choose the profession", set forth in article 50(1) of the CRDTL, and as such conflict with the provisions of articles 24(1) and 95(2)(f) of the CRDTL, according to which the restriction to fundamental rights can only be made by law of the National Parliament, being in its exclusive non-delegable competence area.

This regime does not exclude or change the criminalization of behaviours related to the crimes of intentional bankruptcy and negligent bankruptcy, provided in articles 276 and 277 of the Criminal Code of Timor-Leste, which remain in force.

Thus, we verify that the matter contained in the Recovery and Insolvency Code to be created shall refer, in essence, to a special civil process, in face of the general regime of the Code of Civil Procedure, and shall be characterised by aiming at the recovery of the insolvent company in detriment of its mere liquidation.

Thus,

The Government presents to the National Parliament, under paragraphs b) and c) of the number 1 of Article 96 and paragraph a) of the number 2 of Article 115 of the Constitution of the Republic, with a request for priority and urgency, the following proposal of Law for legislative authorization:

**Article 1**  
**Object**

1. Legislative authorisation is granted to the Government to approve the Insolvency and Reorganisation Code.
2. The legislative authorisation granted under this law covers the amendment or modification of the legal instruments in force containing provisions that need to be harmonised with the principles or precepts included in the future Recovery and Insolvency Code.

**Article 2**  
**Sentence**

The authorised legislative document will aim to create a hybrid administrative and judicial Recovery and Insolvency process.

**Article 3**  
**Extension**

1. The Recovery and Insolvency Code prepared under the present legislative authorization shall observe the constitutional principles and the norms contained in international instruments by which Timor-Leste is bound.
2. The present legislative authorisation has the following extension, the Government is authorised to:
  - a) create a special process under which the insolvency of debtors who are unable to meet their due obligations is declared, called recovery and insolvency process.
  - b) provide that reorganisation and insolvency proceedings should be governed by the principles of speed, transparency, cooperation of the parties, inquisitorial proceedings and equal treatment of creditors.
  - c) provide that not only insolvent debtors and their creditors but also debtors in a situation of merely imminent insolvency may request the opening of reorganisation and insolvency proceedings.

- d) to provide that a debtor who foresees that he will not be able to meet his obligations regularly and punctually in the next 12 months, as well as the debtor who faces serious difficulties to meet his obligations punctually, namely because he lacks liquidity or cannot obtain credit, will be considered to be in a situation of imminent insolvency.
- e) to provide that the recovery and insolvency procedure will have as its purpose the recovery of the company or the individual entrepreneur, in the manner provided for in an insolvency plan, or, when this is not possible, the liquidation of the assets of insolvent debtors and the distribution of the proceeds among the creditors.
- f) provide that the recovery and insolvency process covers:
  - i. all legal persons governed by private law, even if their share capital is held exclusively by public entities, with the exception of financial, banking and insurance entities and all those under the supervision of the Central Bank of Timor-Leste;
  - ii. natural persons who are holders of companies, whether or not they are registered in the Commercial Registry;
  - iii. the autonomous estates; and
  - iv. the permanent representations of foreign companies.
- g) provide that the debtor may - by judicial decision or by administrative decision with suspensive appeal to the Court - be deprived of the exercise, by himself or by his directors, of the powers to administer and dispose of the assets making up the insolvent estate, which will be entrusted to the rehabilitation and insolvency administrator.
- h) provide, in the insolvency and company recovery process, for an incident of qualification of the insolvency as fortuitous or culpable, with the following characteristics:
  - i. Insolvency shall be considered culpable where the situation has been created or worsened as a result of the actions, intentionally or with serious fault, of the debtor or his directors, de jure or de facto.
  - ii. If the insolvency is classified as culpable, the judge may order that the debtor, as an individual, be refused discharge of the remaining liabilities, that the directors of the debtor as a corporate body be held liable for the insolvency debts, or the application of other sanctions that may be provided for in the Insolvency and Reorganisation Code or in special legislation.
- i) provide, in the recovery and insolvency proceedings of natural persons:

- i. that a set of assets will be excluded from the insolvent estate and the universal liquidation process as they are essential to the subsistence of the insolvent individual, in line with the general principles of civil procedure.
- ii. the possibility for natural persons to request exemption from the remaining liabilities, under the conditions and in compliance with the assumptions to be defined by the Government and provided that the debtor has not been convicted of any of the crimes provided for in Articles 267 and 277 of the Criminal Code, being bound to a duty to act diligently to ensure the effective obtaining of income for transfer to creditors, for a period of five years after which all unliquidated credits may be considered time-barred.
- j) to provide that the Timorese courts have jurisdiction for all debtor recovery and insolvency proceedings under the Civil Procedure Code.
- k) provide in the scope of recovery and insolvency proceedings:
  - i. that the process has short deadlines as a rule, with urgent proceedings, with exceptions being made for more complex or larger insolvencies due to the number of workers, assets or liabilities.
  - l) provide that most of the acts of the recovery and insolvency proceeding be performed by specialized professionals acting as recovery and insolvency administrator.
- m) ) provide for the creation of a mechanism to support the administrative costs of the court and the fees of the reorganization and insolvency administrator, in the event the debtor does not have sufficient assets to bear the costs.
- n) provide for a liquidation regime that favours the unitary sale, totally or partially, of the insolvent estate, providing for rules that allow for:
  - i. Unitary transfer of all movable or immovable property associated with the company's activity;
  - ii. Automatic transfer of all rights and obligations other than debt, including licenses and intellectual property rights, associated with the company's activity;
  - iii. Automatic transfer, and not dependent on the counterparty's consent, of all contracts associated with the company's activity, namely leases, rental and employment contracts;
  - iv. Transfer of rights arising from public licenses and concessions, provided the acquirer complies with the award criteria.
- o) establish special criteria for ranking credits in the liquidation of the insolvent estate

- p) establish the jurisdiction of the judge of the reorganisation and insolvency proceeding with respect to the following terms, incidents and appendices of the insolvency proceeding:
- i. Declaration of the opening of the proceedings if the proceedings have been instituted by a third party and, after the debtor has been notified to do so, he lodges an opposition within ten working days;
  - ii. Ratification of a plan for the debtor's recovery or of an insolvency plan (where recovery is not possible);
  - iii. Declaration of insolvency;
  - iv. Verification and ranking of claims;
  - v. Classification of insolvency as culpable or fortuitous;
  - vi. Decision regarding the challenge of the resolution of acts for the benefit of the insolvent estate
  - vii. Decision as to the discharge of the remaining liabilities.
- q) providing that the Public Prosecutor's Office shall have the power, in representation of the entities whose interests are legally entrusted to it, to request the declaration of insolvency of a debtor, as well as to claim the credits of those entities.

### **Article 3 Revocation**

The legislative authorisation set out in this Law also encompasses the revocation of all legislation in force that is contrary to the provisions of the Insolvency and Reorganisation Code.

### **Article 4 Duration**

The legislative authorisation granted by this Law shall last for 180 days as from the date of its entry into force.

### **Article 5 Entry into force**

The present Law shall enter into force on the day following its publication.

Approved on ... of .... 2022

The Prime Minister,

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Taur Matan Ruak

The Coordinating Minister for Economic Affairs

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Joaquim Amaral

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