



Law No 1/2023

Legislative authorisation in matters of insolvency and corporate recovery

The drafting of a law that provides for a system of insolvency and recovery of companies is an essential element for investment and growth of the economic fabric, modernising and developing the economy and making it competitive in the regional and global context.

Therefore, it is justifiable to create a special process of mixed nature, administrative and judicial, which enables the viability of companies in a difficult financial situation, but economically viable, offering guarantees of support to entrepreneurs and investors, but also of protection to creditors, and thus revitalising the business sector. The special process recommended by the Government for the legislation to be issued under the present Authorisation Law, aiming at the rehabilitation of economically sustainable companies, should also be guided by the principle of simplification, entrusting the conduct of the process to specialised professionals to be called insolvency and company recovery administrators.

The National Parliament enacts the following, under the provisions of Article 96.1(b) of the Constitution of the Republic, to be valid as law:

Article 1 **Object**

1. Legislative authorization is granted to the Government to approve, through a decree-law, the legal framework for insolvency and corporate recovery.
2. The legislative authorisation set out in this law covers the amendment or modification of legal instruments in force that contain rules that need to be harmonised with the principles or provisions to be included in the authorised decree-law.

Article 2 **Direction**

The authorised decree-law aims to create a mixed administrative and judicial insolvency and company recovery process.

Article 3 Extension

1. The authorised decree-law 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 scope:
 - a) To create a special process under which the insolvency of debtors who are unable to meet their due obligations is declared, called insolvency and recovery process;
 - b) Provide that insolvency and recovery proceedings should be governed by the principles of speed, transparency, cooperation of the parties, inquisitorial proceedings and equal treatment of creditors;
 - c) Provide that in addition to insolvent debtors and their creditors, debtors in a situation of imminent insolvency may request the opening of insolvency and recovery proceedings;
 - d) To provide that a debtor who foresees that he will not be able to meet his obligations regularly and punctually in the following 12 months, as well as the debtor who faces serious difficulties to meet his obligations punctually, namely because he lacks liquidity or is unable to obtain credit, will be considered to be in a situation of imminent insolvency;
 - e) Provide that the insolvency and recovery process shall have as its purpose the recovery of the company or the sole proprietor, in the manner provided for in an insolvency plan, or, when this is not possible, the liquidation of the assets of the insolvent debtors and the distribution of the proceeds among the creditors;
 - f) Provide that the insolvency and recovery process encompasses:
 - i. All legal persons under 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. Individuals who are holders of companies, whether or not they are registered in the commercial registry;
 - iii. Autonomous assets;
 - iv. 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 itself or by its directors, of the powers to administer and dispose of the assets comprising the insolvent estate, which shall be entrusted to the insolvency and rehabilitation administrator;

- h) Provide, in the insolvency and 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 action, 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 determine that the debtor, as an individual, shall be refused discharge of the remaining liabilities or that the directors of the debtor as a corporate body shall be held liable for the insolvency debts, or the application of other sanctions as may be provided for by the law on insolvency and corporate recovery or by special legislation;
- i) Provide, in the insolvency and recovery proceedings of natural persons:
- i. That a set of assets are excluded from the insolvent estate and from the universal liquidation process because they are essential to the subsistence of the insolvent individual, in line with the general principles of civil procedure;
 - ii. The possibility of natural persons requesting exoneration 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 set out in Articles 276 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, at the end of which all unliquidated credits may be considered time-barred;
- j) To provide that the Timorese courts have jurisdiction for all insolvency and debt recovery proceedings, under the terms of the Civil Procedure Code.
- k) To provide, within the scope of the insolvency and recovery process, that the process shall have short deadlines as a rule, with an urgent procedure, establishing exceptions for more complex or larger insolvency situations due to the number of workers, assets or liabilities.
- l) Providing that most of the acts of the insolvency and recovery process be carried out by specialized professionals who exercise the functions of insolvency and recovery administrator.
- m) Provide for the creation of a mechanism to support the court administrative costs and the fees of the insolvency and recovery 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 company, providing for rules that allow for:

- i. The unitary transfer of all movable or immovable property associated with the company's activity;
 - ii. The automatic transfer of all rights and obligations other than debt, including licenses and intellectual property rights, associated with the company's activity;
 - iii. The automatic transfer, and not dependent on the counterparty's consent, of all contracts associated with the company's activity, namely leases, rental and labour contracts;
 - iv. The transfer of rights arising from public licences and concessions, provided the purchaser meets the award criteria;
- o) Provide for special criteria for the write-off of credits within the scope of the liquidation of the insolvent estate;
- p) establish the jurisdiction of the insolvency and recovery process judge in relation to the following terms, incidents and appendices of the process:
- i. Declaration of the opening of the proceedings if they 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 on the opposition to the resolution of acts in favour of the insolvent estate;
 - vii. Decision regarding the exoneration of the creditor passive;
- q) Providing that the Public Prosecutor's Office has the power to represent the entities whose interests are legally entrusted to it and to request a debtor's declaration of insolvency, as well as to claim debts from those entities.

Article 4
Revocation of legislation

The legislative authorisation provided for in the present law also encompasses the revocation of all legislation in force that is contrary to what is established in the authorised decree-law.

Article 5
Duration

The legislative authorisation granted by the present statute shall have a duration of 180 days as of the date of its entry into force.

Article 6
Entry into force

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

Approved on 19 December 2022.

The Speaker of the National Parliament,
Aniceto Longuinhos Guterres Lopes

Promulgated on January 10, 2023.

To be published.

The President of the Republic,
José Ramos-Horta