

MAR 2021

CORPORATE INSOLVENCY REGIME IN THE ASEAN REGION: FOCUS ON BANGLADESH

A DFDL Insolvency Q&A Publication Series
4th Edition

Q1. What is the primary legislation which governs corporate insolvency? And, are there any other laws in force dealing with corporate insolvency?

There are two laws that deal with bankruptcy and insolvency. They are (1) the Bankruptcy Act 1997 (“**Bankruptcy Act**”) and (2) the Companies Act 1994 (“**Companies Act**”). The Bankruptcy Act is the primary legislation that governs the bankruptcy laws in Bangladesh. While the Bankruptcy Act deals with bankruptcy in general, sections 234 to 321 of the Companies Act deals with the insolvency of companies.

Q2. Is there any conflict of provisions in the corporate insolvency laws?

No, there is no conflicting provision between these legislations.

Q3. Who can initiate a corporate rehabilitation proceeding under the insolvency laws?

Pursuant to the Bankruptcy Act, both creditor and a debtor can file a petition under bankruptcy law in Bangladesh. Eligible creditors can file a petition on the ground of default of BDT 500,000 and the debtors can file a petition under the Bankruptcy Act if the debtor is unable to pay the debt amount of BDT 200,000.

- Whereas, under the Companies Act, an application for winding up of a company can be filed by the company itself, its members, by any creditor, contributory, or by the RJSC. A company may be wound up by the court due to the following circumstances:
- If the company has by special resolution resolved that the company be wound up by the court;
- If the company defaults in filing the statutory report or in holding the statutory meeting;
- If the company does not commence its business within a year from its incorporation or suspends its business for a whole year;

- If the number of members is reduced, in the case of a private company below two, or in the case of any other companies, below seven;
- If the company is unable to pay its debts – a creditor to whom the company is indebted for a sum exceeding taka five thousand then due gives notice to the company to pay the sum and the company neglects to pay the sum for three weeks; and
- If the court is of opinion that it is just and equitable to wind up a company.

Q4. What are the rights of secured vs. unsecured creditors for corporate insolvency proceedings?

The first priority claim is for all revenues, taxes, and payables to the Bangladesh government authorities including the payment due to the official liquidator and the outstanding payments due to the workers of the company. The second-ranked claimant are the scheduled banks or financial institutions that are licensed by Bangladesh Bank. Creditors having unsecured or subordinated claims against the company are ranked at the lowest.

Q5. When can a receiver/liquidator be appointed? And, who can appoint a receiver under the applicable laws?

An official liquidator can be appointed by the court to conduct the proceedings in winding up a company and performing such duties in reference thereto as the court may impose.

Pursuant to the Companies Act, the official liquidator shall have the following power with the sanction of the High Court:

- a. to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;
- b. to carry on the business of the company so far as may be necessary, for the beneficial winding up of the same;
- c. to sell the immovable and movable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or organization or company, or to sell the same;

- d. to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary the company's common seal;
- e. to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;
- f. to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
- g. to raise on the security of the assets of the company any more requisite;
- h. to take out in his official name letters of administration relating to the estate of any deceased contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money be deemed to be due to the liquidator or himself; and
- i. to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

On the other hand, pursuant to the Bankruptcy laws of Bangladesh, court appoints the receiver (from a government approved receivers' list) after making the order of adjudication. Further, the receiver is entitled to exercise the following general powers, and perform the duties and carry out the responsibilities without affecting any provisions of the BA:

- a. do any work in connection with any distributable property concerned and conduct cases in favour of such property.
- b. compromise relating to any claim raised in favour of or against the distributable property or refer the matter to arbitration, take part in any method which is necessary for distributable property and may do any necessary and proper work in connection with the distributable property.
- c. Management of distributable property and collection of part of its sale and disposal of the same and distribution of the sale proceeds among the creditors among the creditors and other persons entitled to get the same according to the provisions of law.
- d. Eject any illegal occupier or custodian of the distributable property and, for this purpose, he will be entitled to receive the co-operation of the police or any other authority through the court.
- e. May examine the debtor or responsible official regarding the distributable property.

- f. May investigate about the conduct of the debtor or the responsible official.
- g. Submit such a report in the court as will show that there is reasonable cause to believe that any action of the debtor or any other person may be taken as an offence under the Penal Code or on account of any action the debtors discharge from liabilities may be rejected according to the law or postponed or adding any condition in the order of discharge will be the proper step for the court under these circumstances.
- h. If the court directs to submit any other report regarding the conduct of the debtor or the responsible official, he (the Receiver) will submit the same.
Note: This clause is in addition to clause (f) by using the word any other report regarding the conduct.

Along with the filing of the case against the offending debtor or against any other person, he will take necessary steps and will co-operate to conduct the said case.

Q6. What are the protections available to a company during the corporate insolvency proceeding?

In a winding-up proceeding of a company, the court may, upon receiving an application from the company or any of its creditor or contributory, at any time after receiving the winding-up petition and before making an order for winding up the company, restrain further proceedings in any legal proceedings against the company and may also pass other similar order upon such terms as the court thinks fit. However, the Bankruptcy Act does not contain any provision providing such protection to debtors or third parties in a bankruptcy proceeding.

Q7. Does the law separately provide for the duties of directors and how does it pave with the existing laws?

There are certain provisions under the Companies Act which allows the court on the application of the liquidator or any creditor or contributor to examine the conduct of the past or present director, manager, or any other officer of the company. If it appears that such director has misapplied, retained, or become liable or accountable for any money or property of the company or guilty of any misfeasance or breach of trust, the court may give directions to the liquidator to prosecute the offender or to refer the matter to the Registrar.

Q8. Are there any restrictions on the power of directors with the onset of corporate insolvency?

Yes, once a winding proceeding commences pursuant to the Companies Act 1994, all the powers of the directors automatically ceases unless or except so far, the members in general meeting or the Liquidator sanctions the continuance thereof or the Court orders so.

Q9. Is there any difference between financial credit and operational credit?

No, these terms are not legally recognized or differentiated from the Companies Act or the Bankruptcy Act. The laws mainly stipulate the 'Bank Debt' (loan or financial benefits from scheduled banks or financial institutions that are licensed by Bangladesh Bank), creditors with unsecured claims and subordinate claims. We understand that an operational creditor will not fall within the abovementioned category of scheduled banks or financial institution, and will rank behind. Also, the operational creditors can initiate the insolvency proceedings under the Companies Act 1994. In fact, in most cases, insolvency proceedings under the Companies Act 1994 are filed by operational creditors instead of the financial creditors as financial creditors, being the banks and financial institutions, have protection under a special act namely the Money Loan Courts Act 2003. Thus, financial creditors only initiate the insolvency proceedings under the Companies Act 1994 if they fail to recover the loan under the Money Loan Court Act 2003.

Q10. Is there a specific time-frame for the corporate insolvency or winding-up proceedings to be concluded under the applicable laws?

No, there is no specific time-frame for the completion of the entire corporate insolvency proceeding in Bangladesh.

Q11. Is the concept of a suspicion/suspension period recognized?

There is no such defined term as 'suspicion/suspension period' recognized under the Companies Act 1994.

Bangladesh is however a common law derivative-based jurisdiction. The usual practice in an ideal insolvency situation is that no transactions can be undertaken once the winding-up proceeding has started and a liquidator is appointed to carry out the insolvency work. As such the regular business activities of the company are suspended and the appointed liquidator acts as the agent of the company to undertake such activities as required to offset the liabilities of the company. Upon distribution of the debts as per priority claims and holding the meeting of creditors and members, the company proceeds to dissolution.

However, in the course of winding up a company, the court may upon receiving an application of the liquidator or of any creditor, made within three years from the date of first appointment of the liquidator, examine the conduct of the promoter, director, manager or officer and may compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just and proper.

Q12. When does a corporate insolvency proceeding transition to a winding-up process?

The corporate insolvency in Bangladesh can start with the filing of a petition in the High Court for winding-up the company or a bankruptcy proceeding under the BA. However, the Companies Act or BA does not provide any guideline with regard to the transition of a bankruptcy proceeding to a winding-up proceeding.

Q13. Is there a dedicated regulator and a dedicated court or tribunal for insolvency matters?

There is a dedicated company bench in the High Court division of the Supreme court of Bangladesh for the adjudication of the corporate insolvency matter. However, there is no dedicated regulator for corporate insolvency matters in Bangladesh. The corporate repository in Bangladesh is the Registrar of Joint Stock Companies and Firms.

Q14. Does the law governing insolvency proceedings provide for personal insolvency and bankruptcy proceedings?

A personal insolvency proceeding can only be brought under the Bankruptcy Act.

Q15. Is the concept of transnational or cross-border insolvency recognized? And, are there separate provisions dealing with cross-border insolvency?

No, there are no separate laws or regulations in Bangladesh which applies to cross-border insolvency.

KEY CONTACTS

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



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