



OFFICE OF THE GENERAL COUNSEL

LAW AND POLICY REFORM PROGRAM

Enabling effective legal systems for a prosperous, inclusive,
resilient, and sustainable Asia and Pacific

Insolvency Law Reform

23 September 2022

- **ADB** and **why** does ADB do LPR?
- **What** does ADB do in LPR?
- **Insolvency Law?**

ADB

The Asian Development Bank (ADB) envisions a prosperous, inclusive, resilient, and sustainable Asia and the Pacific, while sustaining its efforts to eradicate extreme poverty in the region.

Despite the region's many successes, it remains home to a large share of the world's poor: 263 million living on less than \$1.90 a day and 1.1 billion on less than \$3.20 a day.

ADB assists its members, and partners, by providing loans, technical assistance, grants, and equity investments to promote social and economic development.

ADB maximizes the development impact of its assistance by facilitating policy dialogues, providing advisory services, and mobilizing financial resources through cofinancing operations that tap official, commercial, and export credit sources.

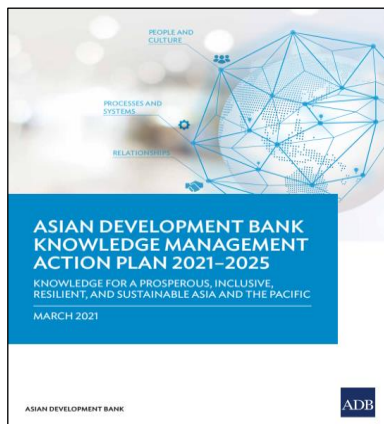
<https://www.adb.org/who-we-are/about>

LAW AND POLICY REFORM PROGRAM



ADB's Transition to a Knowledge-Based Organization

finance + knowledge + partnerships



- Strategy 2030 – need to strengthen ADB's knowledge services to stay relevant as a leading and trusted organization in Asia and the Pacific
- **How can ADB catalyze knowledge for innovation and development?**
- ADB must integrate knowledge work across sectors and themes and public and private sectors and employ cross-disciplinary problem-solving and advance innovation
- Focus on high quality policy advice, legal and regulatory reforms, institutional capacity development

LPR Activities

- Legal and Regulatory Reform
- Capacity Building – *tailored national programs and regional & international conferences*
- Knowledge Resources

LPR Areas

- Digital Economy
- Environmental Protection and Climate Change
- Financial Sector Development
- Gender Equality
- Inclusive Growth and Access to Justice
- Private Sector Development
- Public-Private Partnerships
- *Anti-Money Laundering and Combating the Financing of Terrorism*
- *Domestic Resource Mobilization and International Tax Cooperation*

Regional KSTA: Law and Policy Development for Private Sector and Public-Private Partnership Projects

(January 2022 – December 2025)

- To help improve legal, regulatory and policy framework; policy dialogue; and capacity for private sector development and financing of infrastructure projects including those implemented as PPPs, leading to increased private sector investment and operations
- **Insolvency reform** – Armenia, Bhutan, Kyrgyz Republic, Maldives, Tajikistan and Vietnam
- **Arbitration reform** – Armenia; exploring possibilities in Kyrgyz Republic
- **PPP reform** – Lao PDR; Tajikistan; exploring possibilities in Vietnam
- One-ADB approach with RDs/RMs/PSOD/OPPP/PPP TG
- Increasing demand...

Why insolvency law?

- Every economy needs to deal with a person or company in financial difficulties
- There is a public interest in:
 - providing an orderly approach to enforcement
 - respecting security interests
 - treating all creditors fairly
 - protecting employees
 - taking account of the interests of the community



An effective Insolvency Law should:

- provide certainty to the market to promote economic growth and stability;
- maximise the value of a debtor's assets and the recoveries by creditors;
- provide a transparent procedure that contains, and consistently applies, clear risk allocation rules;
- facilitate the timely, efficient and impartial resolution of insolvency;
- integrate with a country's broader legal and commercial systems.
- provide initial access to the insolvency procedures by reference to clear and objective criteria, so as to minimize the risk of delay and disputes relating to commencement;
- provide convenient means of identifying, collecting, preserving and recovering a debtor's assets;
- facilitate creditor and stakeholder participation in the insolvency procedure with minimal cost and delay;
- provide an appropriate structure for the supervision and administration of proceedings; and
- provide predictable and consistent outcomes for parties involved in the proceeding.

Key Principles

- Maximise the value of debtor's assets
- Strike a careful balance between liquidation and rescue
- Provide equitable treatment between similarly situated creditors
- Provide timely, efficient and important resolutions
- Prevent abuse of system
- Facilitate cross-border insolvencies
- Apply process in a predictable manner



Two principal objectives

1. Business rescue (where possible)
 - value is preserved
 - employees keep their jobs
 - creditors keep their customer
2. Fair and orderly liquidation process
 - secured debt respected
 - unsecured creditors treated equally

Features of a law

- Civil or common law tradition
- Age of the law - current international best practice
- Law includes corporate rescue and rehabilitation processes?
- Is there an MSME insolvency regime?
- What role is envisaged for the insolvency practitioner?
- What role does the judiciary play?

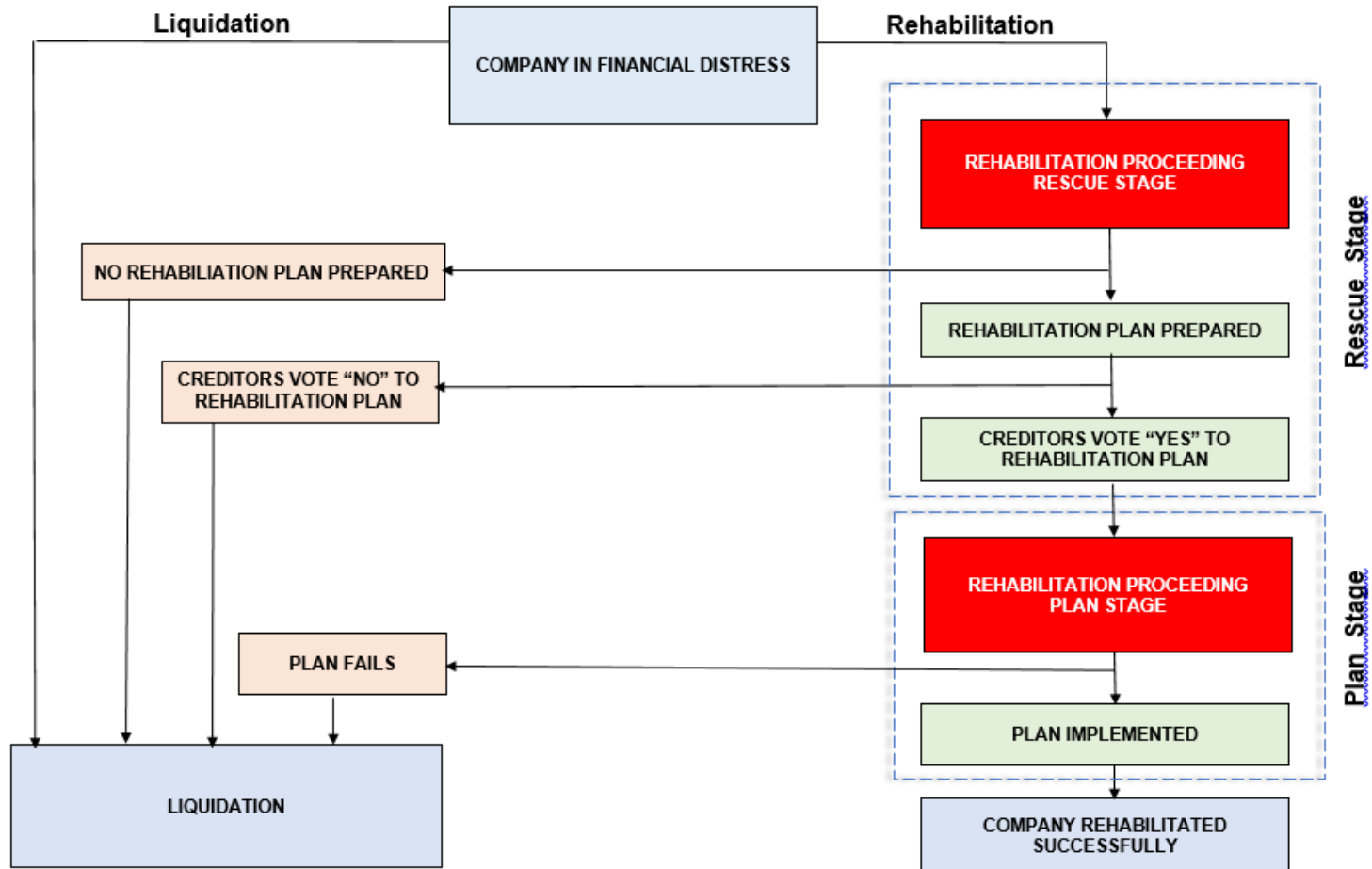
Case Study Myanmar Insolvency Law 2020



Case Study Myanmar Insolvency Law 2020

- ADB advised on the Myanmar Insolvency Law 2020.
- It came into effect on February 14, 2020, replacing the Yangon Insolvency Act 1909 and the Myanmar Insolvency Act 1920. It was followed by the Insolvency Rules, issued by the Union Supreme Court on April 28, 2020.
- This paradigm shift from the age-old insolvency regime provides comprehensive, unified legislation dealing with personal, corporate, and cross-border insolvency.
- Unlike the previous regime, the Law presents companies with a new alternative to liquidation - rescue and rehabilitation. The Law aims to provide efficient corporate rescue and rehabilitation for distressed businesses.
- I will look at two features of the Law, the corporate rescue regime and its application to MSME's.

Corporate Insolvency – Structure

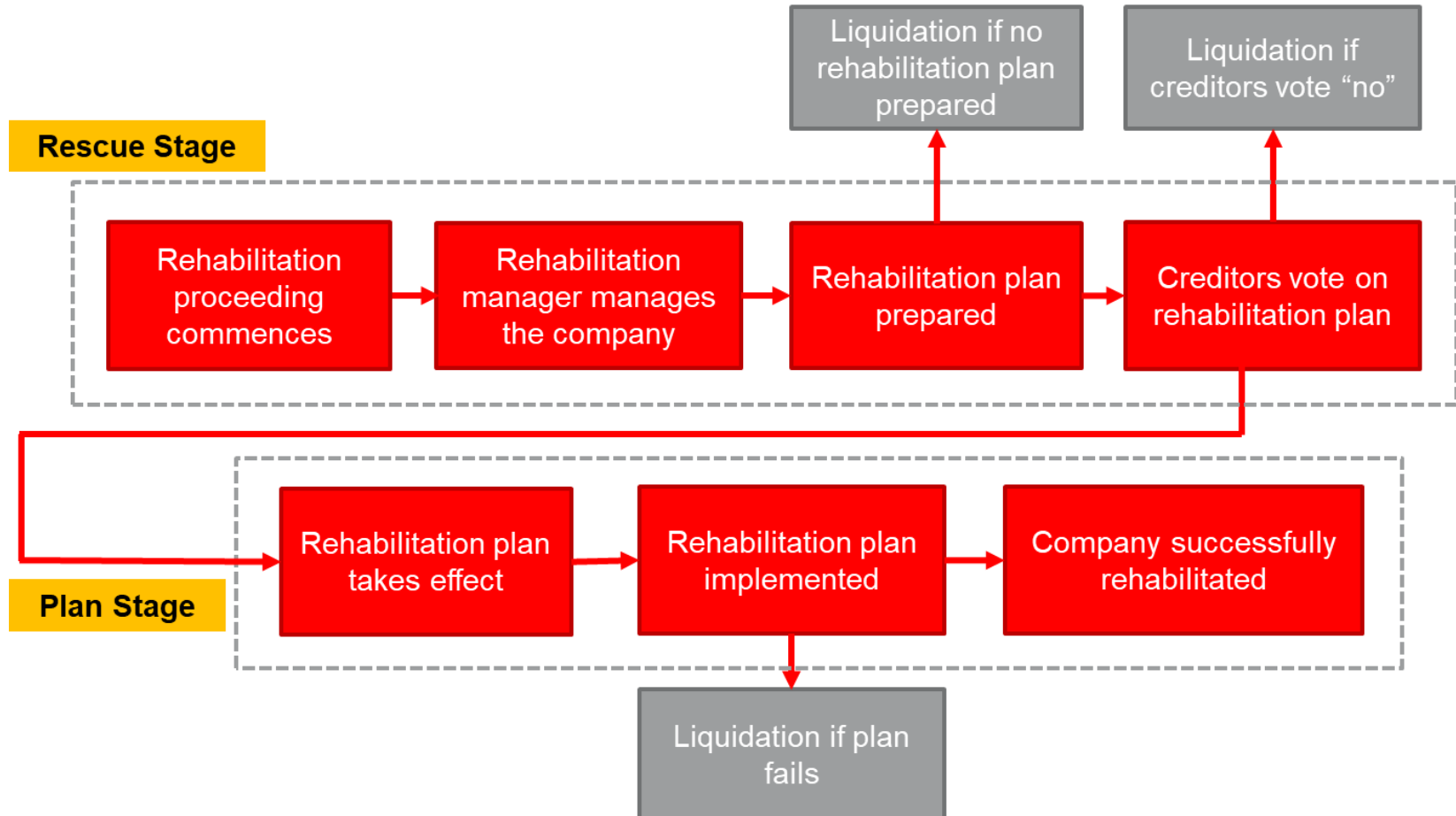


Rehabilitation Proceeding Objectives

- Rescue the company as a going concern
- If unable to rescue company, ensure as much as possible of business remains in existence
- If above objectives not achievable, ensure a better result for creditors than under a liquidation



Corporate Rescue



“The combination of challenges that MSMEs commonly face makes it more difficult for MSMEs to manage the complexities normally required for insolvency procedures. Perhaps unsurprisingly, MSMEs are one of the business structures that most often undergo insolvency proceedings. Having an efficient, expeditious insolvency system in place that rescues MSMEs or swiftly reallocates their productive assets to more efficient activities is paramount.”

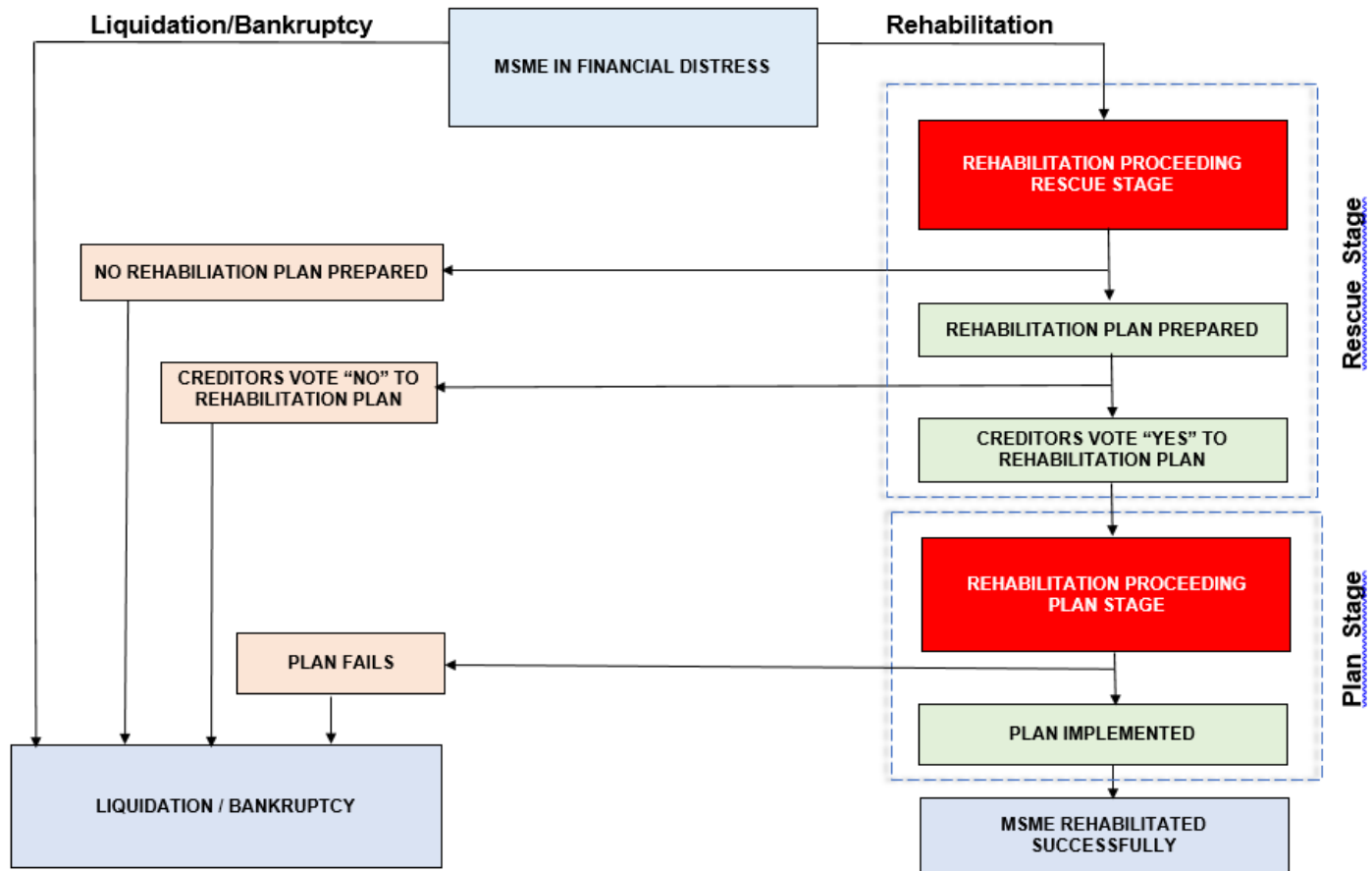
**– World Bank’s Report on the Treatment of
MSME Insolvency 2017**

MSME Provisions

- Special issues arise with MSMEs:
 - disincentives for MSMEs to access insolvency procedures
 - creditor passivity
 - limited information available
- Law designed to offer an inexpensive, quick and simple streamlined, simplified rehabilitation process for MSMEs
- Otherwise largely consistent with Corporate Rescue part of the Law
- Importance of mediation
- Role of the Court and Creditor passivity



MSME Insolvency



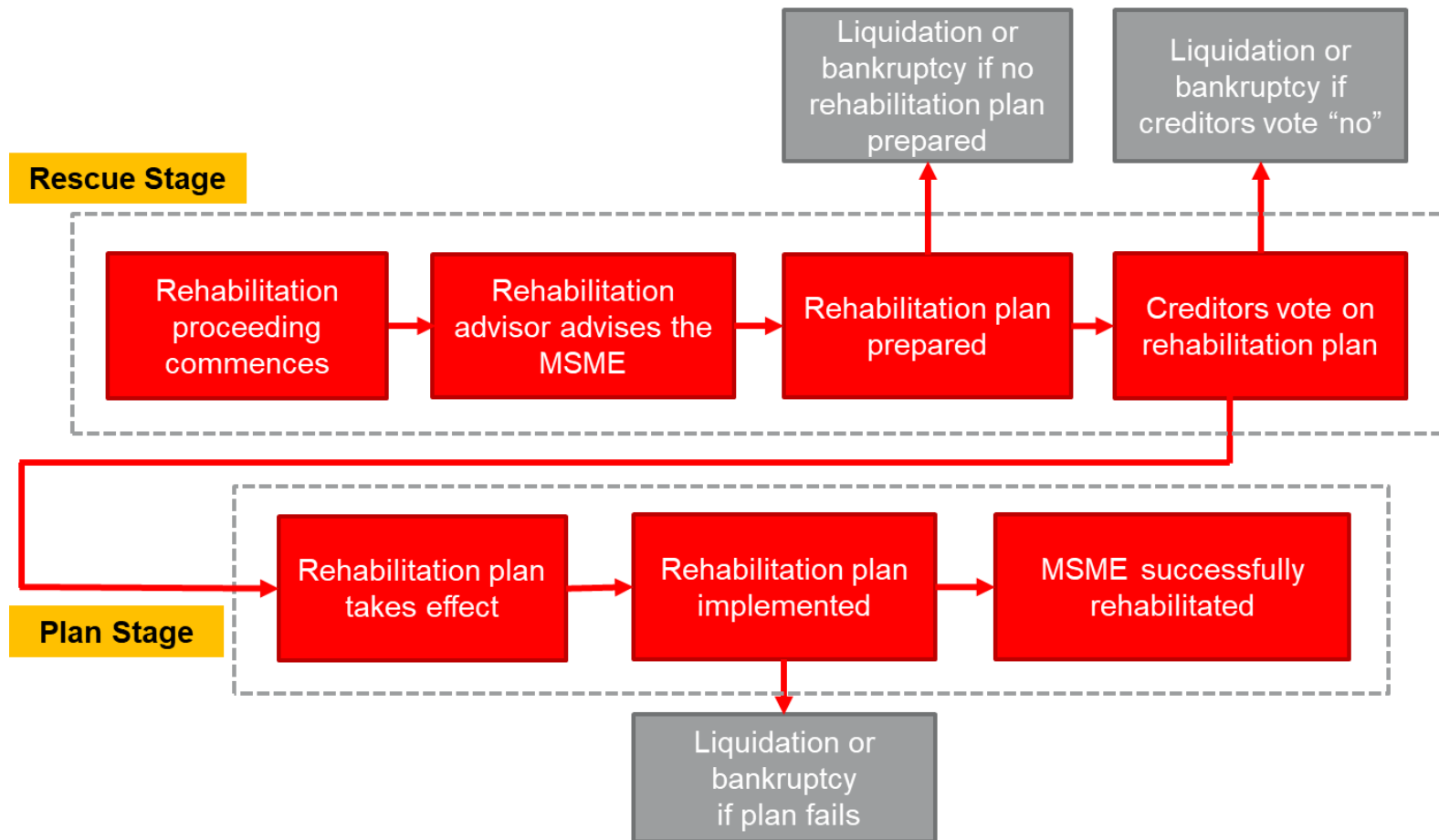
Who or What is a MSME:

- Micro or Small to Medium Enterprise
- Defined in Law and Regulations:
 - a company with debts of less than 10 million kyats
 - an individual or partnership whose debts are more than 1 million kyats

Objectives of the MSME Insolvency Process:

- to rescue the MSME as a going concern
- if unable to rescue the MSME, to ensure as much as possible of its business remains in existence
- if above objectives not achievable, to ensure a better result for creditors than under a formal insolvency process (liquidation or bankruptcy)

MSME Corporate Rescue



MSME Rescue

- “Rehabilitation Advisor” appointed by proprietors of MSME if MSME is insolvent
- A Rehabilitation Advisor cannot be appointed by a secured creditor or the Court.
- MSME's proprietors (the owners or directors) remain in control
- The role of rehabilitation advisor is to advise
- The rehabilitation advisor is not personally liable for debts of the MSME
- Specific provisions for mediation
- MSME (with advice from the rehabilitation advisor) or the rehabilitation advisor prepares plan
- A ‘quick process’:
 - 10-week deadline to approve plan
 - Plan must be sent to all creditors, who must vote on it within 21 days
- The MSME rehabilitation plan will be approved unless written objections are received in writing from creditors representing more than 50% in value and 50% in number
- Alternatively, the rehabilitation advisor will summon meeting if requested by 30% in value of creditors, or if he or she considers there to be a reasonable prospect of approval at a meeting

Conclusion

- **Law reform:** time and effort, experts and stakeholders
- **Diagnostic review:** know the economy and cultural and legal background
- **Policy:** Stakeholders input required for key policy decisions



Q & A



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