

EBRD INSOLVENCY LAW ASSESSMENTS PROJECT 2006				
KAZAKHSTAN				
The assessment is based on the Law Concerning Bankruptcy (Law No. 67, 2001) of the Republic of Kazakhstan as amended to 2006.				
The assessed compliance score was a medium compliance.				
The law remains much the same as the areas previously assessed. As stated in relation to the previous assessment, the law has a number of positive features. Mentioned in particular are the following:				
<ul style="list-style-type: none"> • The provision for interim protective relief. • The provisions for the avoidance of pre-bankruptcy transactions. • The inclusion of claims for damages for civil wrongs as 'debts'. • The somewhat unique methodology that has been adopted in respect of the rehabilitation process. • The information and independent analysis that is required in respect of a plan of reorganisation. 				
The main areas in which the law does not meet the standards of the assessment are:				
<ul style="list-style-type: none"> • Some weaknesses in the definition of 'insolvency'. • The requirement that 3 months should elapse after a debt has become due before a creditor may use that as evidence of insolvency of the debtor. • The prospect that a creditor might have to provide additional or 'other' (unspecified) information in respect of an application to initiate insolvency proceedings. • The failure to provide a clear statement regarding the effect of insolvency proceedings on secured creditors and owners of property that is the possession, use or occupation of the debtor. • Subjecting secured creditors to administration expenses. • The creditor's approval for a plan of reorganisation based on the decisions of the creditors committee and not the general body of creditors. 				
KEY				COMPLIANCE RATING
Y	Substantial compliance			90% ++ very high compliance
Y/?	Compliance with reservations			80% - 89% high compliance
N/?	Doubtful compliance			70% - 79% medium compliance
N	Non compliance			60% - 69% low compliance
N/A	Not applicable			below 60% very low compliance
PART A - COMMENCEMENT		YES / NO	ARTICLE	COMMENTARY

1. APPLICATION OF THE INSOLVENCY LAW				
Does the law apply to the following enterprises engaged in commercial activity:				
1.1 natural person enterprises;	N	2		Bankruptcy of individual entrepreneurs is regulated by the Civil Code.
1.2 legal person enterprises;	Y	2		The Law provides that bankruptcy of certain types of companies (banks, pension funds, insurance companies, and agricultural companies) can be subject to other laws and regulations.
1.3 state owned/controlled enterprises?	Y	2		Except for certain types of state entities, i.e., state budgetary enterprises and institutions.
2. COMMENCEMENT ELIGIBILITY				
Does the insolvency law permit an insolvency proceeding to be initiated by a:				
2.1 debtor enterprise;	Y	15		
2.2 creditor of a debtor enterprise?	Y	15		
3. COMMENCEMENT CRITERIA				
3.1 Does the law clearly state the type of financial condition that must apply to a debtor enterprise before an insolvency proceeding may be initiated?	Y/?	1, 4		<p>"Insolvency" (nesostoyatel'nost) is the ultimate test pursuant to which a court finds a debtor company bankrupt. In this context "insolvency" is defined as debtors' incapacity (either proven by court or acknowledged by the debtor itself) to satisfy in full creditors' monetary claims.</p> <p>"Deemed insolvency" (neplatezhesposobnost) is the test which, if met, allows the creditor to apply for debtor's bankruptcy. "Deemed insolvency" is defined as debtor's failure to perform monetary claims, which are more than 3 months overdue.</p>

3.2 Does this financial condition refer to a situation in which a debtor is unable to pay its mature debts?	Y	1, 4		Article 4.1 states that a debtor shall be considered incapable of meeting debts upon a failure 'to execute an obligation within 3 months from when its term had come due'. This suggests a cash flow test. See also commentary to 3.1 above.
3.3 Does this financial condition refer to a situation in which a debtor's liabilities exceed its assets?	N			
3.4 Does this financial condition also include the circumstance that a debtor will or may become unable to pay its mature debts?	N			
3.5 Does the law permit an insolvency proceeding to be initiated by a debtor with reasonably minimal formalities?	Y	17, 89-91, 96-99		<p>Articles 17.2 and 89 – 91 provide for the so-called “simplified bankruptcy proceedings” whereby the debtor must initiate its own bankruptcy. This covers, among others, the cases where debtor's shareholders and/or appropriate management body adopt a decision to liquidate the debtor but the debtor's property is insufficient to cover creditors' claims. However, the simplicity is mostly attributed to the fact that this is a voluntary bankruptcy proceeding as opposed to one filed by the creditors. Timing and filing-wise, this is still a burdensome exercise since the court will have to (i) confirm that this is not an intentional (false) bankruptcy, (ii) appoint the bankruptcy manager and (iii) monitor and approve the winding-up procedures.</p> <p>In addition, articles 96 and 99 provide for the extra-judicial winding-up procedures whereby an insolvent company is liquidated under the control and supervision of the creditors and the special state agency responsible for monitoring bankruptcy proceedings in Kazakhstan.</p>

3.6 Does the law provide any specific means to enable a creditor to establish the financial condition referred to in 3.2 (such as failure to satisfy a demand for payment of an undisputed debt)?	Y/?	4		See above comments. The '3 month'overdue test appears to be excessive.
3.7 Does the law permit a single creditor to commence proceedings?	Y	15		
3.8 If the law prescribes any further criteria (other than jurisdictional and financial condition bases) for commencement of proceedings, is that criteria clear and sufficiently practicable to permit proceedings to be commenced?	N/?	22, 23		These provisions refer to 'other information when required' which may be problematical. It may also be required that a creditor provide evidence of 'recognition by the debtor of the creditor's claim'.
4. COURT / TRIBUNAL JURISDICTION				
4.1 Does the law clearly identify the court or tribunal in which proceedings should be commenced?	Y	8		The law simply copies the main principle of the Kazakhstan rules of civil procedure whereby a claim is generally brought at the location (residence/domicile) of the debtor. To identify the proper court (i.e., district or oblast court) one must refer to the Kazakhstan Code of Civil Procedure, which sets out the rules concerning jurisdiction.
4.2 Does the law provide for the proceedings to be under the control or supervision of that court or tribunal?	Y	10, 67		Note that both court and the 'Authorised Body' has jurisdiction to supervise proceedings. It should be noted though that pursuant to the latest changes introduced to the Kazakhstan bankruptcy legislation, most of the supervising powers of a court have been transferred to the Authorized Body, which is defined as a state agency responsible for monitoring and supervising bankruptcy proceedings. Currently the Authorized Body is the Committee for Work with Insolvent Debtors under the Ministry of Finance.
4.3 Is the court a special bankruptcy or commercial court (or division)?	N			There are no special bankruptcy courts. With limited

				exceptions, bankruptcy cases are referred to district courts at the location of the debtor.
5. REMEDIES				
5.1 Does the law provide for alternative remedies of bankruptcy (liquidation) and reorganisation (rescue)?	Y	35		
5.2 Does the law provide for the conversion from one type of remedy to the other?	Y	36, 63		Where rehabilitation procedures fail to reach their objective, court may terminate such rehabilitation procedures and order winding-up procedures.
6. INTERIM RELIEF				
6.1 Does the law provide for interim relief to protect the assets of the debtor?	Y	28		
7. HEARING AND DETERMINATION OF PROCEEDINGS				
7.1 Do the rules and procedure for the opening of an insolvency proceeding provide for: -				The law provides general rules and procedures, which are specific for bankruptcy cases. These deal with general timing, filing and notification requirements. With respect to other more detailed rules (e.g., appeals); the law simply cross-refers to the Code of Civil Procedure.
i) an early (timely) consideration of the case;	Y	27-29, 31		
ii) a fair and proper process of notice and hearing of a disputed case;	Y	34-36, 42		
iii) the right to appeal from a decision in a case?	Y			
7.2 Does the law provide that the court/tribunal must open an insolvency case if a debtor or a creditor satisfies the legislative formalities required for the opening of an insolvency proceeding?	Y			The court must open an insolvency case if the creditor's (or debtor's) application (i) meets the criteria referred to under 3.1 and 3.2 above and (ii) satisfies other formal (filing-related) requirements for such an application.
7.3 Does the law permit a case to be opened and fully administered where the assets are insufficient to meet the costs and expenses of such administration?	Y			The Law does not differentiate between a situation where the debtor's assets are insufficient to cover creditors' claims and the one where the debtor's assets are

				insufficient to cover the administrative expenses. In either case, the rehabilitation (or bankruptcy manager) must be appointed.
8. IMMEDIATE EFFECTS OF OPENING PROCEEDING				
8.1 Does the law provide that, without any further determination, the opening of proceedings has the following effect:				
i) all enforcement action or proceedings against the debtor's assets are stayed;	Y	28		Note that actions for life and health related damages are not stayed (Article 28.1.2).
ii) the commencement or continuation of any individual action or proceedings concerning the debtor's assets is stayed;	Y	28		
iii) the right to transfer, secure or otherwise deal with the debtor's assets is suspended?	Y	28		
8.2 In the absence of such a provision, does the law provide that the court/tribunal may make orders to the same effect upon or shortly after the opening of the case?				
	N/A			
8.3 Do the prohibitions above extend to:				
i) a secured creditor;	Y/?			The law is silent – impliedly secured creditors are subject to the stay.
ii) a third party who owns property that is used, occupied or in the possession of the debtor;	N			The law is silent – impliedly third party, who owns property that is temporarily used, occupied or in possession of the debtor is not be subject to the stay.
iii) a supplier under retention of title terms?	N			The law is silent – impliedly a supplier under retention of title terms is not being subject to the stay.
8.4 Does the law specify the rights of any of the persons mentioned in 8.3 to apply for relief from the stay?				
	N			
8.5 Does the law provide for effective notification of the commencement of proceedings to:				
i) the public generally;	Y	28, 36		
ii) all known creditors individually;	N			
iii) all relevant regulatory authorities?	N			
8.6 Does the law provide for the appointment of an independent functionary to either				
i) take full control of the debtor's business and assets; or	Y	9		The Law provides that upon a court decision to rehabilitate (or terminate) an insolvent company, rehabilitation (or bankruptcy) managers are appointed by the Authorized Body. Such managers are vested with the right to

				take control of both, debtor's assets and business. The rights of the directors are terminated with the appointment of a rehabilitation (bankruptcy) manager.
ii) supervise the debtor's business and assets?	Y	9		It is to be noted that when rehabilitation procedures were initiated by the debtor itself, the debtor may, by filing an application with the court, request to retain control over its assets and business, in which case the debtor (its manager) has the rights and obligations of a rehabilitation manager. Such application must always be pre-approved by the creditors.
9. ADMINISTRATION OF AN INSOLVENCY CASE				
9.1 Does the law specify the qualifications of a person who may be appointed an independent functionary to administer the insolvency?	N/?	9		Although a 'rehabilitation manager' and a 'bankruptcy commissioner' are required to be licensed, the criteria for the issue of such a license are not stated in the Law. The grounds for disqualification are little more than demonstrable conflicts of interest.
9.2 Does the law provide for the appointment of a functionary through the court or the creditors?	Y	Various		
9.3 Does the law provide for the possible removal and replacement of a functionary?	Y	9		
PART B – ASSETS OF THE ESTATE				
	YES / NO	ARTICLE		COMMENTARY
10. ASSETS OF THE DEBTOR				
10.1 Does the law adequately define the assets forming the debtor estate?	Y	74		
10.2 Does the law clearly state that the ownership rights of third parties and secured property rights are preserved?	N/?			With regard to secured and other creditors' rights to be repaid, Article 75 sets out the general rules of repayment of the

				insolvent company's debts. Under these rules, secured creditors come third after (i) payments to individual creditors who have claims against the debtor arising out of damage caused to their health and/or lives and (ii) salaries and other employment-related payments. State budget (tax) and other unsecured creditors are fourth and fifth respectively.
10.3 Does the law require that the debtor safeguard, deliver up or make available all assets belonging to the estate to the relevant functionary?	N/?			The law is silent. It only provides that when the winding-up (liquidation) procedures start, the duty to identify and take over the debtor's assets is vested with the bankruptcy manager. Impliedly, the debtor should render all necessary assistance to the bankruptcy manager.
10.4 Does the law provide that a third party in possession of assets of the estate of a debtor is required to deliver up such assets or make them available to the relevant functionary?	N			
11. PROVISION OF INFORMATION TO A RELEVANT FUNCTIONARY				
11.1 Does the law require the debtor (or relevant persons connected to the debtor) to provide all information concerning the assets and financial affairs of the debtor?	N/?			See comments under 10.3 above.
11.2 Does the law require relevant third parties to provide all information concerning the assets and financial affairs of the debtor?	N			
12. AVOIDANCE OF PRE-BANKRUPTCY TRANSACTIONS				
12.1 Does the law provide for the avoidance or setting aside of transactions made prior to the opening of insolvency proceedings that involves the transfer, disposal or granting of security in relation to assets of the debtor (including the payment of money):				
i) in favour of a creditor, if as a result of the transaction a creditor is preferred over other creditors;	Y	6		
ii) in favour of a third party, if the transaction is a transaction at an under value as regards the debtor;	Y	6		
iii) in favour of a third party, if the transaction was made with the intention of defeating, prejudicing or otherwise defrauding creditors of the debtor?	Y	6		

12.2 Does the law provide clear criteria (including time periods) that must be established before any such transaction may be avoided or set aside?	Y	6		
12.3 Does the law also provide for establishing lesser criteria to avoid or set aside transactions such as those mentioned above where the other party involved in the transaction is closely connected to the debtor?	N	6		Art. 6.4 appear to be directed at 'connected' persons, but the time periods and other conditions are the same as for non connected persons.
12.4 If the law provides for the setting aside of transactions such as those mentioned above, does it provide for recovery from the third party?	Y	6		
12.5 Does the law provide for the avoidance or setting aside of a transfer, disposal or grant of a security in relation to the assets of the debtor that is made subsequent to the opening of proceedings without proper authority?	Y/?			Impliedly only, since such transactions are prohibited.
PART C – CREDITORS	YES / NO	ARTICLE		COMMENTARY
13. CLAIMS OF CREDITORS				
13.1 Does the law provide for creditors (including secured and foreign creditors) of the debtor to be notified of any requirement to lodge claims?	Y/?	28, 70		Only by newspaper publications.
13.2 Does the law enable claims to be made and accepted in respect of all debts and liabilities (including liability for a civil wrong) of the debtor?	Y	Various		
13.3 Does the law provide for set-off?	N			
13.4 Does the law allow creditors to claim at any time before a dividend is paid?	Y/?			Creditors' claims must be filed within two months following the announcement on the bankruptcy (liquidation) of the debtor. Claims filed after the expiry of the two-month period but prior to the final approval of the liquidation balance, will be paid after repayment of all creditors who filed in time.
13.5 Is there provision for judicial or other review of the claim of a creditor that is rejected or disallowed by the relevant functionary?	Y	10		
14. INVOLVEMENT OF CREDITORS				
14.1 Does the law provide for adequate participation in an insolvency case either by the creditors as a whole or through a representative committee?	Y	10, 11-14		
14.2 Does the law require meetings of the creditors and/or creditors' committee?	N/?			Impliedly. There is no statement to this

				effect in the law. By implication a voting right based on an admitted claim.
14.3 Does the law require that creditors be informed of the progress of the administration of an insolvency case at relevant stages?	Y	12		
14.4 Do creditors have access to a court or tribunal to review aspects of insolvency case that affect their interest/s to which they object?	Y	13, 51, 70, 87		In general, the bankruptcy manager must submit monthly reports to the creditors' committee and the Authorized Body on the progress of the administration of an insolvency case.
15. PRIORITY OF CLAIMS AND EQUALITY BETWEEN CREDITORS				
15.1 Does the law provide that the costs and charges involved in the administration of an insolvency case rank in priority to creditors' claims?	Y	75		
15.2 Does the law clearly otherwise state the priority for the payment of creditors claims?	Y	75		
15.3 With the exception of the above priorities, does the law provide for equal treatment for all creditors of the same class?	Y	76		
PART D - REORGANISATION PROCEEDINGS				
	YES / NO	ARTICLE		COMMENTARY
16. REORGANISATION PROCEEDINGS				
16.1 Does the law clearly provide who has the power of continued management in a case of reorganisation?	Y	9, 46		In case of reorganization (rehabilitation), rehabilitation manager is appointed to run the business and manage the assets of the debtor. In certain exceptional cases, the debtor may continue to run its business and manage its assets.
16.2 If the debtor (or representative/s of the debtor) may continue to manage, does the law provide for any supervision by a relevant functionary and/or the replacement of the debtor by a relevant functionary if circumstances require it?	Y	9		Where rehabilitation procedures were initiated by the debtor itself, the debtor may request the creditors' committee to approve his application to court seeking court's permission to retain control over the assets and the business. If such

				<p>application is approved, the debtor (its manager) has the rights and all the duties and obligations of a rehabilitation manager. In particular, all the rules concerning supervision over, and replacement of, a rehabilitation manager should equally apply to the debtor's manager.</p>
16.3 In a case of a proposed reorganisation, does the law specifically prohibit or restrict the termination of:				
i) the supply of essential services including gas, electricity and telecommunications to the debtor;	N			
ii) other essential contracts to which the debtor is a party?	N			
16.4 Does the law require that a decision regarding a proposed reorganisation be reached within a specified time frame?	Y/?			<p>The timing requirements for submitting reorganization (rehabilitation) proposals are confusing and even contradictory to the general principles of the Law.</p> <p>In particular, Article 43.1of the Law provides that the debtor must submit its rehabilitation proposal [to the creditors' committee, the Authorized Body and the court] before applying to court for voluntary bankruptcy. Likewise, pursuant to the same Article 43.1, creditors and third parties may submit their rehabilitation proposal [to the Authorized Body] before the court initiates bankruptcy proceedings.</p> <p>As it was explained in the resolution of the Supreme Court of Kazakhstan dated 28 April 2000, rehabilitation procedures can be applied only to those companies whose insolvency was confirmed by a court. Hence, in theory, rehabilitation proposals could be submitted before the court orders winding-up (liquidation) procedures.</p>

16.5 Does the law clearly state who is responsible for the preparation of a proposed plan of reorganisation?	Y	43		
16.6 Does the law require that material information in connection with a proposed plan be fully disclosed to creditors?	Y	45		
16.7 Does the law provide that an independent analysis of a proposed plan of reorganisation be made available to creditors?	Y/?	45		Auditors' report is required to confirm the real possibility of restoring the debtor's solvency.
16.8 Does the law provide that a reorganisation plan must comply with specified minimum 'protective' requirements (e.g. that the anticipated return to creditors will be at least equal to the return they would obtain in a liquidation) or otherwise provide against possible commercial abuse?	N			
17. REORGANISATION FINANCING				
17.1 Does the law provide for financing the on-going needs of the business that is attempting a reorganisation?	Y			
17.2 If so, does the law provide for a commercially sound process by which such finance may be obtained and repaid?	N			
18. APPROVAL OF REORGANISATION PLAN				
18.1 Does the law provide that a prescribed percentage of creditors (whether in number, value or both) is required to approve a plan of reorganisation of the affairs of the debtor?	Y	43		The law requires that a pre-petition vote be taken only with respect to commencing rehabilitation procedures (see 14.2 above). Once the creditors' committee is appointed, the voting is on a majority vote of the members irrespective of the percentage of debt that each member represents.
18.2 If so, is the approval required no more than 75% and more than 50%?	Y	43		See above comments.
18.3 Does the law provide for restrictions on voting on a reorganisation plan by 'insider' creditors (e.g. shareholders, directors of the debtor)?	N			
18.4 Does the law provide that a sufficient vote of approval binds all creditors (including dissenting creditors)?	Y	43, 47		The Law states that "if the interests of creditors who disagree are not infringed" the court may approve the plan.
18.5 Does the law enable a dissenting creditor to appeal against a reorganisation plan?	Y	53		The debtor or any creditor who believes that the rehabilitation plan (or any actions of the rehabilitation

				manager there under) infringes its interests can apply to court with a request to re-consider the proposed plan or terminate the rehabilitation procedures, in which case, the court has 10 days to address such a claim.
18.6 Does the law require that a reorganisation plan be approved/confirmed by a court/tribunal?	Y	43		
18.7 Does the law provide that the bona fide approval of the relevant majority of creditors cannot be overruled by the court?	N/?			The law does not provide that the court cannot overrule the bona fide approval of the relevant majority of creditors. Nevertheless, unless the rehabilitation proposal is accompanied by a complaint filed by a dissenting creditor(s), court's approval is merely a formality.
18.8 Does the law enable a case of reorganisation to be converted to a case of liquidation in the event that a plan of reorganisation is not prepared within time, a plan is not approved by creditors or a plan is not approved/confirmed by a court/tribunal?	Y	43, 53, 54		Rehabilitation procedures will not be approved unless there is a properly prepared and approved rehabilitation plan. Once initiated, rehabilitation procedures may last for up to two years. Rehabilitation procedures may be converted into liquidation procedures if they fail to meet their targeted objective.
19. POST APPROVAL				
19.1 Does the law provide for any supervision in the implementation of a reorganisation plan?	Y	46, 51		
19.2 Does the law enable a plan of reorganisation to be amended/modified with the approval of creditors?	Y/?	44		It is unclear whether this applies to the process by which a rehabilitation plan is approved or subsequent.
19.3 Does the law clearly state the effect of a failure to implement a plan of reorganisation?	Y	53, 54		The rehabilitation manager must apply for bankruptcy.

PART E – TERMINAL PROCEEDINGS	YES / NO	ARTICLE		COMMENTARY
20. LIQUIDATION				
20.1 Does the law provide for the termination of the powers and authority of the management of an insolvent debtor enterprise once it has been determined that the debtor enterprise should be liquidated?	Y	9, 69, 70		
20.2 Does the law provide for an independent functionary to administer the liquidation?	Y	9, 69, 70		
20.3 Does the law provide for the sale of the assets of the debtor by either public auction or private sale?	Y	74-84		
20.4 Does the law make provision for the timely conduct of a liquidation?	Y	65		Liquidation period should not exceed 6 months. In exceptional cases it can be extended for another 3 (in certain cases 6) months.
20.5 Once a liquidation commences, does the law provide for a lifting of any stay in respect of actions and proceedings against the assets of the debtor in so far as it affects secured creditors and other persons who own property that is in the possession or occupation of the debtor?	N			
21. DISCHARGE/ RELEASE OF DEBTS				
21.1 Does the law provide for the discharge/release of all debts and liabilities on the completion of the proceedings?	Y	76, 86		
21.2 If not, is it clear what liabilities survive discharge?	N/A			
22. ENFORCEMENT & SANCTIONS				
22.1 Does the law provide sanctions for persons who breach or fail to fulfil obligations under the law?	Y	107		
23. CROSS-BORDER INSOLVENCY				
23.1 Does the law provide for the recognition of an insolvency case that has been opened in another jurisdiction?	N			
23.2 If so, does the law enable a court or tribunal to assist and co-operate in respect of such foreign proceedings?	N			