Business Reorganisation Assessment

Kyrgyz Republic

European Bank
for Reconstruction and Development

Special thanks to:

GRATA International

Kalikova & Associates (K&A)

Council on Development of Business and Investments under the Government of the Kyrgyz republic

Part A

General Information

Macro Data

6.517	6.0%	US$ 1,120	Лв Kyrgyzstani som – KGS	10%	8.6%	6.6%
Population (million)[1]	GDP growth rate[1]	GDP per capita[1]	Currency	Corporate tax rate[2]	Inflation rate[1]	Unemployment rate[1]

Insolvency Legislation

The primary legislative text governing insolvency and restructuring proceedings of legal entities and entrepreneurs is the **Law on Bankruptcy** No. 74 (the Insolvency Law) dated 15 October 1997 (as amended). In addition, the Kyrgyz Republic has special **Regulations on Application of Bankruptcy Procedures** adopted by Resolution of the Government of Kyrgyz Republic No. 865 dated 30 December 1998 (as amended). The licensing requirements for insolvency practitioners are regulated by the **Temporary Regulations on Licensing the Activities of Insolvency Administrators**, adopted by Resolution of the Government of Kyrgyz Republic No. 64 dated 8 July 2021 and in force until 31 December 2023.

[1] **IMF – Source as of August 2021:** www.imf.org/en/Countries/KGZ

[2] **KPMG – Source as of August 2021:** www.home.kpmg/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html

[3] Note: the data is presented on an accrual basis, i.e. the number of debtors also includes debtors that initiated the procedure the previous year.

[4] **mineconom.gov.kg/ru/direct/8/83**

Insolvency Data

Data on insolvency (bankruptcy) proceedings, including statistical data, is published on the website of the Bankruptcy Department under the Ministry of Economy and Finance of the Kyrgyz Republic: **www.bankrotstvo.kg**. However, the page is under construction, and relevant information was not available as of the date of this publication. Court resolutions are made publicly available on the following page: **www.act.sot.kg/ru**; however, these are not updated on a regular basis.

A summary of insolvency statistics provided by the Council on Development of Business and Investments under the Government of the Kyrgyz Republic is set out below.

Additional insolvency-related data is available on the website of the Ministry of Economy and Finance[4]: as of 31 December 2020, the number of debtors declared insolvent in 2020 was 346, with only 43 companies having assets (12.4%) and 303 debtors having no assets (87.6%). From this number, 333 debtors are subject to insolvent liquidation (96.2%) and only 13 were subject to reorganisation procedures (10 special administration restructurings and three rehabilitations).

Year	Petitions for insolvency	Outcomes[3]
2017	356	A total of eight enterprises underwent special administration in the form of restructuring and the rehabilitation procedure was applied to one enterprise. Insolvency (bankruptcy) proceedings were completed for 56 individual debtors and 80 (legal entity) debtors went into insolvent liquidation.
2018	355	A total of 10 enterprises underwent restructuring, one enterprise underwent rehabilitation, and one enterprise entered into a settlement agreement. Insolvency (bankruptcy) proceedings were completed for 75 individual debtors and 80 debtors went into insolvent liquidation.
2019	349	A total of 11 enterprises conducted restructuring and the rehabilitation procedure was applied to three enterprises. Insolvency (bankruptcy) proceedings were completed by 62 individual debtors and 56 debtors went into insolvent liquidation.

Company Information

The company law framework is governed by the **Civil Code** No. 15 dated 8 May 1996 (as amended), the **Law on Joint Stock Companies** No. 64 dated 27 March 2003 (as amended) and the **Law on Business Partnerships and Companies** No. 60 dated 15 November 1996 (as amended). Legal entities are registered with the Ministry of Justice. Information on legal entities (active and liquidated) is available at: **register.minjust.gov.kg/register**.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency court cases are dealt with by general courts of civil jurisdiction. The jurisdiction of the court is established based on the debtor's legal seat of operations (i.e., within the territorial jurisdiction of the relevant court) or place of main residence for entrepreneurs. The regulatory authority responsible for the insolvency framework is the Bankruptcy Department under the Ministry of Economy and Finance of the Kyrgyz Republic (the Bankruptcy Department).

Employees of the Bankruptcy Department, legal entities and entrepreneurs can act as insolvency practitioners. Heads of legal entities and entrepreneurs must be certified by the Bankruptcy Department and included in the Register of the Licenced Specialists maintained by the Bankruptcy Department. The register is usually available at: **www.bankrotstvo.kg/spec-admin/list**, but the website is currently under construction. All potential candidates for the licence undergo a special training programme from the Bankruptcy Department.

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Part B

Business Reorganisation

Are there any incentives for extrajudicial voluntary agreements (workouts)?

There are no specific incentives for extrajudicial voluntary agreements.

What is the nature and purpose of the reorganisation procedure?

There are three main reorganisation procedures in the Kyrgyz Republic legal framework: rehabilitation (реабилитация), which is available both out-of-court and in-court; special administration (атайын администрациялоо), which is available both out-of-court and in-court, and also provides a restructuring option; and in-court sanation (санация). Reorganisation can also be achieved by means of amicable agreement (жарашуулар).

Click here for a high-level overview of the Kyrgyz business reorganisation framework.

Rehabilitation procedure

The debtor can commence this procedure in order to restore its solvency and agree a rehabilitation plan with the creditors. If supported by all creditors present in the creditors' meeting, the procedure can proceed out-of-court. Otherwise, it must take place entirely in-court (Article 102). The purpose of the procedure is restoring the debtor's solvency in accordance with the approved rehabilitation plan, with replacement of the debtor's management by the insolvency practitioner (Article 103). The procedure can be conducted out-of-court or in-court for legal entities and in-court for entrepreneurs (see below).

Special administration procedure (restructuring)

The debtor or its creditors can initiate this procedure, which can lead to restructuring (реструктуризация) or liquidation (жоюу) of the debtor's estate. The procedure can be conducted out-of-court, if supported by the debtor and the creditors' meeting. Otherwise, the procedure must take place entirely in-court (Article 29). The restructuring option of the special administration procedure involves the creation of one or more new legal entities to which the debtor's assets are transferred. The newly-created legal entity or entities will be subsequently sold and the proceeds used to satisfy the claims of creditors, following which the debtor legal entity will be liquidated (Article 2).

Reorganisation within bankruptcy (insolvency) proceedings

In-court insolvency proceedings can be initiated by the debtor, the creditor or the state body responsible for insolvency matters (the Bankruptcy Department) (Article 272). This may lead to the liquidation or reorganisation of the debtor's estate through the rehabilitation or special administration procedures described above. In-court reorganisation options also include the possibility of a sanation agreement or an amicable agreement.

Sanation

The sanation procedure is aimed at economic rehabilitation of the debtor using financial, economic or organisational measures and full satisfaction of all creditors' claims (Article 2) and requires a guarantee by a third party that all creditors' claims will be satisfied. Within 10 calendar days from commencement of the insolvency case, the court rules on whether to declare the debtor insolvent, as well as on the applicable insolvency procedure (Article 2716).

Amicable agreement

An amicable agreement can be reached at any stage of in-court insolvency proceedings (i.e. during the in-court rehabilitation, special administration or sanation procedures) in order to terminate the proceedings by reaching an agreement between the debtor and creditors (Article 105).

References to Articles are to Articles of the Insolvency Law, unless specified otherwise. For an explanation of technical terms, please see the **Glossary of the Main Assessment Report**

Who can commence the process and what entry conditions apply?

Commencing insolvency (bankruptcy) proceedings

In order to access any of the reorganisation procedures, an insolvency proceeding needs to be commenced (Article 4) and the debtor's inability to pay should be established. This can be done by the court or, in the case of an out-of-court procedure, by a creditors' meeting, based on the conclusion of a forensic examination, the results of an independent audit or the report of the temporary insolvency practitioner. The debtor is deemed to be unable to pay in the following circumstances: it cannot pay monetary claims in full and within the time limits established by law or contract or it is unable to make payments to the budgetary and extra-budgetary funds within the statutory deadlines as its obligations exceed its easily realisable (liquid) assets; it has failed to satisfy the creditors' claims in accordance with the procedure set out in Articles 27-26 (where the debtor or a third party agrees to repay the claim of the applicant in full) before the court delivers its judgment on the merits of the insolvency case; or the competent supervisory body (for regulated entities) has established that the debtor's liabilities exceed its assets.

Creditors have the right to commence insolvency proceedings only if the minimum debt threshold is met (Article 9-1), i.e.: if the claims of one or more creditors in total amount to at least 1,000 estimated values (approx. €1,000); or if the claim of a creditor who is a natural person, including an entrepreneur, equals at least 500 estimated values (approx. €500).

Sanation procedure

The procedure only applies to legal entities (Article 6). The decision on commencing the procedure is taken by the court based on the request of the debtor or the debtor's shareholders (owner of the debtor's property). However, a third party must provide a guarantee (surety) that all creditors' claims will be satisfied, as well as all expenses of the insolvency proceedings and any further losses by the creditors incurred during the procedure (Article 95). Before the launch of the procedure is approved by the court, the debtor, creditors and the guarantors sign a sanation agreement listing the conditions for conducting the procedure (Article 97).

Rehabilitation procedure

This procedure can be conducted out-of-court or in-court for legal entities, and only in-court for entrepreneurs (Article 98).

The decision on commencing the procedure out-of-court is taken by the creditors' meeting convened by the debtor or a creditor (or a group of creditors) supported by the debtor. In order to initiate the procedure, the debtor must have an unsatisfactory balance sheet or be unable to pay debts when they fall due, with no minimum amount requirement (Article 100). The procedure can be launched once the rehabilitation plan developed by the debtor is approved by the creditors' meeting and the insolvency practitioner (temporary manager) is appointed (Article 98).

The decision on commencing the in-court procedure is taken by the court on the request of the debtor (Article 276) or the creditor which filed for debtor's insolvency (Article 278). The out-of-court rehabilitation procedure may also proceed in-court on the request of any party involved (Article 98).

Special administration procedure (restructuring)

The procedure only applies to legal entities (Article 5) and can be conducted out-of-court or in-court.

The out-of-court procedure can be commenced by the debtor (with no minimum debt requirement) or by the creditors. The procedure can be launched once the creditors' meeting, with the debtor's consent, declares the debtor insolvent and decides to launch the procedure and to appoint an insolvency practitioner (special administrator) (Article 29).

The decision on commencing the in-court procedure is taken by the court on the request of the debtor (Article 276), the creditor who filed for debtor's insolvency (Article 278), or the

creditors' meeting (Article 30). The participants in the insolvency proceedings can also request that the out-of-court procedure proceeds in-court if there are reasons precluding conducting or finalising the procedure out-of-court (Article 28).

Once the procedure is launched, it is the special administrator's discretion as to whether restructuring is possible or whether the debtor's estate must be liquidated (Article 55).

Amicable agreement

The amicable agreement is not a process but an option within insolvency proceedings and the Insolvency Law only regulates the formalities for reaching an agreement.

Is there any court involvement?

Yes, if an insolvency proceeding is commenced by the application to the court, all types of procedures within such proceeding are fully court-supervised.

The rehabilitation and the special administration (restructuring) procedures can also be conducted completely out-of-court, unless the parties request to proceed with court involvement.

Are there any hybrid procedures?

No. As a general rule, the procedures are conducted either out-of-court (rehabilitation or restructuring in the special administration procedure), or in-court. However, the out-of-court rehabilitation procedure can proceed in-court on the request of any party involved, thus requiring court approval of the plan adopted by the creditors' meeting.

Does the debtor remain in possession of and continue to manage its business?

Sanation procedure

Yes, the debtor remains in possession of the company throughout the procedure, but the court appoints an insolvency practitioner (temporary administrator) to supervise the implementation of the sanation agreement (Article 97).

Rehabilitation procedure

No, once the procedure is launched, all functions related to management of the debtor are transferred to the insolvency practitioner (external manager) appointed by the creditors (in the out-of-court procedure) or by the state body on insolvency (for the in-court procedure) (Article 98).

Special administration procedure (restructuring)

No, once the procedure is launched, all functions related to management of the debtor are transferred to the insolvency practitioner (special administrator) appointed by the creditors (in the out-of-court procedure) (Article 29) or by the state body on insolvency (for the in-court procedure) (Article 2721).

Amicable agreement

The amicable agreement is an option within insolvency proceedings and is not a separate procedure. Thus it has no impact on whether the debtor stays in possession.

Is there a need to appoint an insolvency practitioner?

Yes, an insolvency practitioner is appointed in every insolvency proceeding. Depending on the procedure, the insolvency practitioner is referred to as a temporary administrator (during the time after the court accepts an application on the debtor's insolvency and prior to the court ruling on any of the procedures; and in the sanation procedure), a special administrator (in the special administration procedure), or an external manager (in the rehabilitation procedure).

The main mandate of the temporary administrator for in-court proceedings is to ensure the preservation of the debtor's assets, to analyse the financial condition of the debtor prior to a court ruling on commencement of any of the procedures (Article 61), and supervision of the implementation of the sanation agreement (Article 97). A temporary administrator can also be appointed by the court at the request of any creditor after the out-of-court procedure is initiated and before the first creditors' meeting takes place. If the creditors then decide to proceed with the out-of-court procedure, they appoint the temporary administrator as a special administrator or as an external manager (Article 62).

The special administrator is the only legal representative of the debtor undergoing the special administration procedure. The main mandate of the special administrator is the application of the debtor's assets in the creditors' interests and the distribution of funds to creditors in accordance with the priority established by the law, after the satisfaction of the secured creditors' claims and the reimbursement of the costs of the insolvency proceedings (Article 65). The special administrator is obliged to report to the court or the state body responsible for insolvency matters, to convene a creditors' meeting at least quarterly, to provide information on the implementation of the procedure and the debtor's financial condition to the creditors upon request, and obtain an approval of the creditors' meeting for certain decisions (e.g. a decision on alienating the debtor's assets) (Article 70). Otherwise, the special administrator acts with discretion in accordance with the Insolvency Law (including making the decision on whether the restructuring is feasible).

The external manager is the only legal representative of the debtor undergoing the rehabilitation procedure and generally has the same rights and obligations as the special administrator (Article 103). However, the external manager must follow the rehabilitation plan approved by the creditors' meeting or the court.

Is there any applicable stay or moratorium? If so, please describe whether automatic, length of moratorium and what it covers.

Yes, an automatic moratorium is applicable on commencement of the sanation procedure (Article 97). The moratorium is also triggered once the debtor is declared insolvent (either by the court or by the creditors' meeting) and insolvency proceedings are launched (Article 22). This moratorium does not generally include secured creditors, which can still present their claims to the insolvency practitioner and be paid in full, except for the sanation procedure, where enforcement of all claims (secured and unsecured) is suspended.

Is there any protection for essential contracts and to prevent termination of contracts by third parties?

Yes, in the special administration and rehabilitation procedures, the contracts of the debtor with the suppliers of electricity, heat, water and sewage, and communication services, security of the debtor's property, as well as other services for continuing the economic activity and preservation of the debtor's property cannot be terminated due to the debtor being declared insolvent (Article 671). If the insolvency practitioner decides to continue the execution of these contracts, the costs related to their execution after the initiation of the insolvency proceedings are deemed to be costs of the insolvency proceedings.

However, in the sanation procedure, there is no protection against termination of contracts by third parties as a result of the debtor entering into an insolvency procedure, including a reorganisation procedure, and there are no provisions in the Insolvency Law to ensure continuity of essential contracts for the day-to-day operations of the debtor. The amicable agreement is an option within insolvency proceedings and is not a separate procedure. Thus it has no rules on protection of essential contracts or to limit termination of contracts by third parties.

Is there a provision for new financing?

Yes, during the rehabilitation procedure only. The insolvency practitioner (external manager) may, subject to the consent of the creditors' meeting, obtain unsecured loans to continue the debtor's operations and implement the rehabilitation plan. These new loans are treated as costs of the insolvency proceedings (i.e., they are repaid outside of the ordinary rules of distribution and priority is given over all creditors whose claims are included in the claims register, except for secured creditors with respect to the value of the pledged asset). Any new loans granted on an unsecured basis do not require court approval, unless creditors do not provide their consent in which case the matter is resolved by the court. If the insolvency practitioner is unable to obtain an unsecured loan, the court with the consent of the creditors' meeting can authorise a loan secured by the debtor's property which is not subject to pledge (Article 1041).

Does the law recognise separate classes of creditors for voting purposes?

rNo. All creditors are represented in the creditors' meeting, and have voting powers proportionate to their claims compared to the overall claims amount. They vote as one group. Secured creditors only have voting powers with respect to any difference between the amount of the secured claim and the appraisal value of the pledged property any unsecured portion of their debt.

The Insolvency Law only sets out the priority order of the creditors' claims for the purposes of distribution of liquidation proceeds (Article 87 which refers to Article 99 of the Civil Code). Secured creditors' claims are settled prior to the claims in this list.

What are the majorities required to approve a reorganisation plan?

The weighting of votes in all procedures is determined by the value of creditors' claims. There is only a requirement of majority by value and not by number.

Sanation procedure

For court approval of the sanation agreement, it has to be signed by the debtor, the creditors which filed for the debtor's insolvency, and guarantors (Article 97). There is thus no majority requirement since all creditors need to agree to be bound by the terms of the agreement.

Rehabilitation procedure

For approval of the rehabilitation plan by the creditors' meeting, a majority of creditors' votes claiming 60 per cent or more of the debt due to those present at the meeting vote is required. The amount of debt due to those not present at the meeting is irrelevant for the purpose of this calculation (Article 102). For the in-court rehabilitation procedure, the approved rehabilitation plan needs to be submitted to the court for its confirmation.

Special administration procedure (restructuring)

The special administration procedure (including the restructuring option) is conducted at the discretion of the special administrator and does not include the preparation of and voting on any reorganisation plan, regardless of whether conducted in-court or out-of-court (Articles 55 and following). The main mandate of the special administrator is defined as alienation of the debtor's assets in the creditors' interests and the distribution of funds in accordance with the priority established by the law, after the satisfaction of the secured creditors' claims and the reimbursement of the costs of the insolvency proceedings (Article 65). The special administrator can also conclude that the restructuring option is feasible and proceed with the creation of one or more new legal entities (Article 55).

Amicable agreement

For approval of the amicable agreement by the creditors' meeting, the agreement of the creditors of the third rank (unsecured creditors), fourth rank (mandatory payments, e.g. taxes) and fifth rank (penalties for overdue payments to creditors of the third and fourth priority) claiming 60 per cent or more of the debtor's debt is needed (Article 108). The approved amicable agreement needs to be submitted to the court for its confirmation and signature.

Who does the reorganisation plan bind?

Generally, none of the reorganisation procedures include secured creditors, unless they decide to relinquish their security and become unsecured creditors.

Sanation procedure

The sanation agreement binds its signatories, i.e. the debtor, creditors and any signatory guarantors.

Rehabilitation procedure

The rehabilitation plan approved by the creditors' meeting (in the out-of-court procedure) or the court (in the in-court procedure) as applicable binds the debtor, the insolvency practitioner and all creditors (Article 98).

Special administration procedure (restructuring)

The special administration procedure (including the restructuring option) is conducted at the discretion of the special administrator and does not include any reorganisation plan, regardless of whether it is conducted in-court or out-of-court (Articles 55 et seq.)

Amicable agreement

An amicable agreement approved by the creditors' meeting and the court binds the debtor, the creditors and participating third parties (Article 105).

What is the timeframe for the reorganisation procedure and any moratorium?

The law does not set out any general timeframes for reorganisation procedures or moratorium periods. The moratorium lasts from commencement until termination of the procedure.

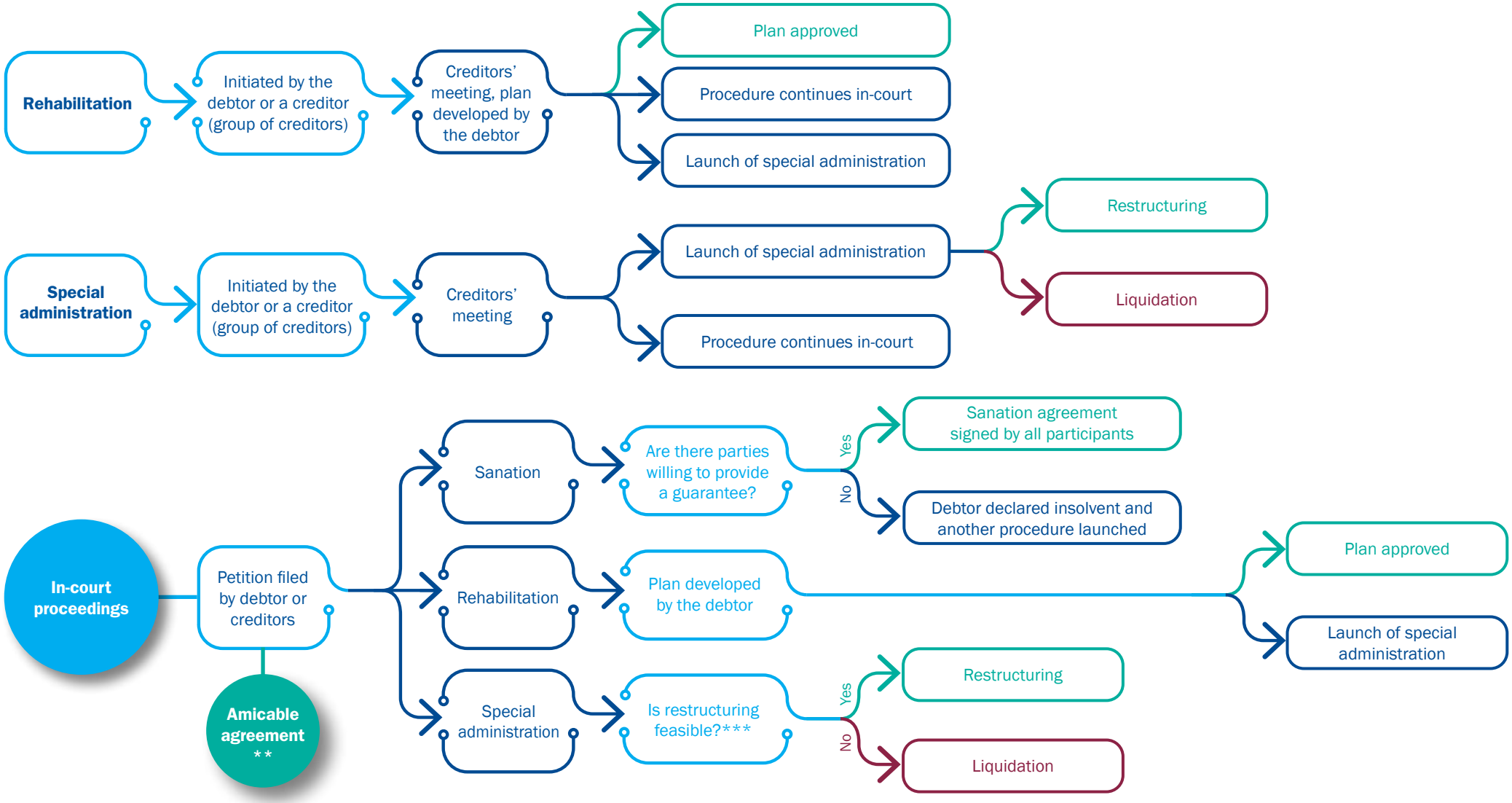
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, Kyrgyz Republic has not adopted the UNCITRAL Model Law. There are no express legal provisions on cross-border insolvency proceedings and no provisions with respect to cooperation and coordination on fundamental issues, such as recognition and enforcement of moratoria and injunctions and other measures aimed at protecting the debtor's estate.

Special features/observations:

- Like many former Soviet Union economies, the Kyrgyz Republic has an amicable settlement mechanism that can be used alongside the existing insolvency procedure to reach a restructuring agreement. Another typical instrument is sanation, a procedure in which a third party guarantees that all creditors' claims will be satisfied.
- The insolvency practitioner in the special administration procedure enjoys significant discretion, particularly in deciding whether restructuring is feasible since no restructuring plan is approved by creditors or the court.
- The reorganisation procedures within insolvency proceedings are rarely used in practice because the majority of the insolvency cases are related to insolvent liquidation of debtors with zero assets (absent debtor liquidation).

Overview of Kyrgyz Business Reorganisation Procedures*



* This provides a high-level overview of the business reorganisation procedures. See the commentary in this profile and the Insolvency Law for further details, including with respect to any applicable moratorium and creditor voting thresholds

** Can be reached at any stage of the in-court proceedings, including sanation, rehabilitation and special administration

*** Special administrator's discretion

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