Business Reorganisation Assessment

Albania

European Bank
for Reconstruction and Development

Special thanks to:

Tonucci & Partners Albania

Wolf Theiss Albania

Investment Council Secretariat

Part A

General Information

Macro Data

2.970	1.0%	US$ 4,130	L Albanian lek ALL	15%	3.9%	22.8%
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 **Law No. 110/2016 on Bankruptcy** (Official Gazette no. 226 of year 2016) (as amended) (the Insolvency Law) approved on 27 October 2016 governs the insolvency of legal and natural persons in Albania. The Insolvency Law entered into force on 22 May 2017, six months after its publication in the Official Gazette. A few procedural aspects, such as the jurisdiction of insolvency cases, are regulated by the **Civil Procedure Code**, Law No. 8116 dated 29 March 1996 (as amended). Insolvency practitioners, known as bankruptcy administrators, are regulated by the Insolvency Law.

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

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

[3&4] No cases were returned to trial

Insolvency Data

Insolvency data is published on the official website of the Albanian National Bankruptcy Agency (NBA) but the website as of July 2021 was not accessible. The NBA provided the EBRD with statistics for 2019 and 2020 in respect of insolvency proceedings for businesses that are legal entities. For period from January to December 2019, there was a total of 34 insolvency applications and for period from January to June 2020, a total of 22 insolvency applications initiated by legal entities. These statistics are aggregated and do not differentiate between procedures. However, use of the expedited reorganisation procedure and the reorganisation procedure is reportedly low in practice. A breakdown of the number of insolvency cases per court is set out below.

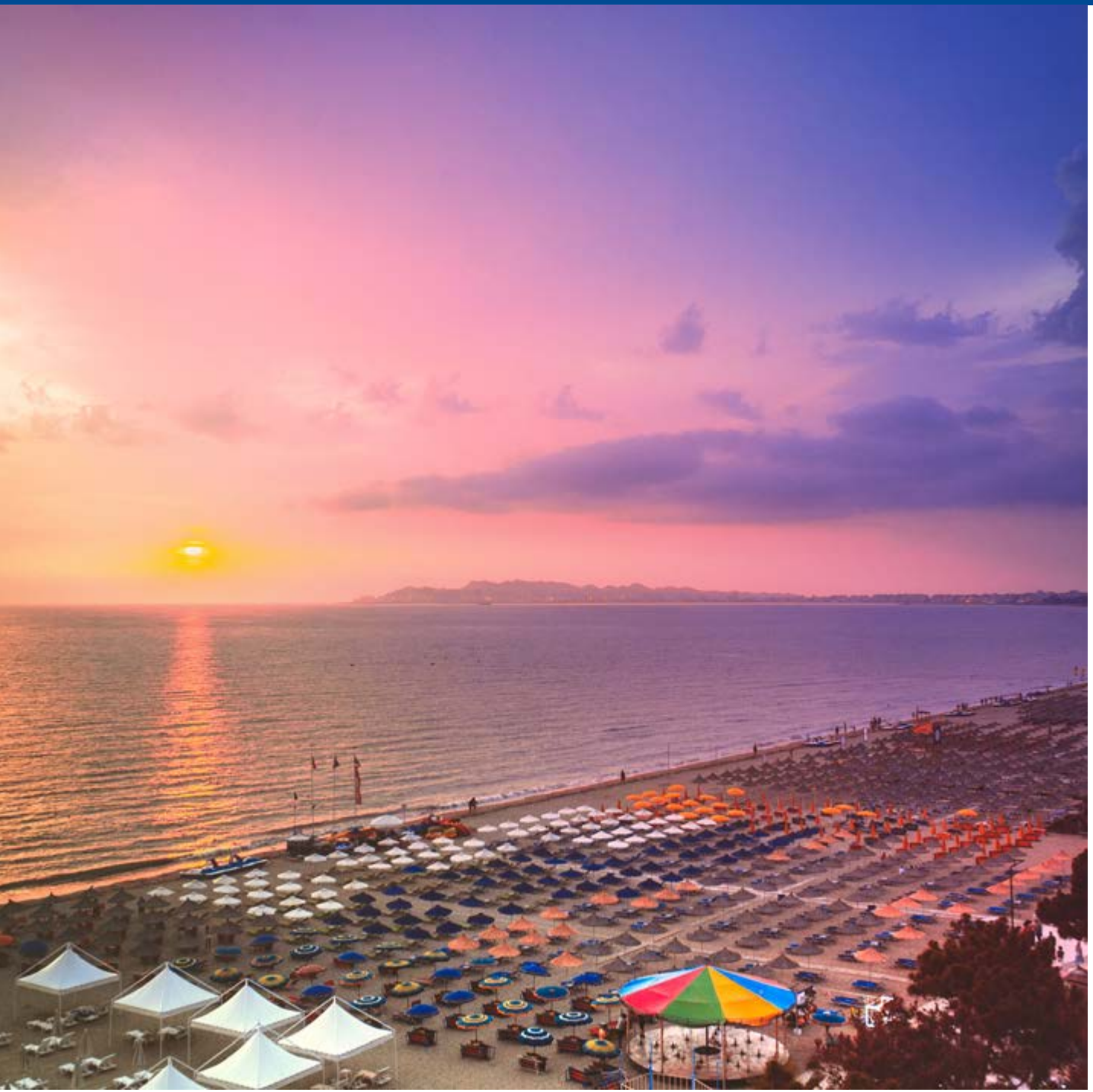
Statistics 2019 Insolvency Proceedings for Legal Entities[3]

District Court	Pending from previous years	New cases	Total number of cases
Tirana	14	7	21
Durrës	1	2	3
Shkodër	1	1	2
Fieri	2	0	2
Vlora	1	1	2
Lezha	2	1	3
Kruja	0	1	1
Total	**21**	**13**	**34**

Statistics 2020 Insolvency Proceedings for Legal Entities[4]

District Court	Pending from previous years	New cases	Total number of cases
Tirana	17	2	19
Fieri	2	0	2
Lezha	1	0	1
Total	**20**	**2**	**22**

A list of entities for which the tax administration has requested the initiation of insolvency proceedings is available **here**.



Company Information

The Albanian company law framework is governed by Law No. 9901 dated 14 April 2008 “On Entrepreneurs and Commercial Companies” (as amended). Information about companies is available in the official Albanian commercial registry, which is maintained by the National Business Centre. Searches for companies can be made free of charge via: **qkb.gov.al/home/**.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency courts are courts of general civil jurisdiction with commercial law divisions. The competency of the insolvency court is established based on the debtor’s centre of main interests. The relevant regulatory authority for insolvency proceedings is the Ministry of Justice. The National Bankruptcy Agency (NBA), a public entity under the Ministry of Justice, is the state authority entrusted with supervision, training and licensing of insolvency practitioners. The Ministry of Justice maintains a list of experts for all areas within its competence, including for insolvency proceedings. The register of authorised insolvency practitioners is maintained by the Ministry of Justice as part of a general register of experts and can be accessed **here**.

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Part B

Business Reorganisation

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

There are no specific incentives for concluding an extrajudicial voluntary agreement, however the Insolvency Law contains a hybrid reorganisation mechanism known as an expedited reorganisation procedure.

What is the nature and purpose of the reorganisation procedure?

There are two main reorganisation procedures under the Insolvency Law.

The first is the expedited reorganisation procedure (Procedura e Riorganizimit të Përshpejtuar) which aims to enable the debtor to overcome a situation of imminent insolvency by means of an agreement with its creditors designed out-of-court and approved by the court through a speedy procedure (Articles 122 and 123).

The second is the reorganisation procedure (Procedura e Riorganizimit). This procedure is available after the debtor's entry into general insolvency proceedings, which can lead either to reorganisation or liquidation of the debtor, depending on the decision of the creditors' assembly (Article 94). The purpose of general insolvency proceedings is to discharge the debtor from its obligations (Article 2) and the reorganisation procedure involves the preparation of a reorganisation plan (Article 98).

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

Who can commence the process and what entry conditions apply?

Expedited reorganisation procedure

This procedure is only available to a debtor in a situation of imminent insolvency (Article 123). Imminent insolvency means that it is objectively foreseeable that the debtor will not be able to satisfy its debts in a period of six months or less. The debtor must include the proposal of the reorganisation plan with the content described under Article 98 of the Insolvency Law with its petition for opening of proceedings. The debtor must also demonstrate that it has support, recorded in a notarised document, of creditors representing 30 per cent or more of the total amount of claims as envisaged in the financial accounting records of the debtor.

Reorganisation procedure

To access this procedure parties need to petition for the opening of general insolvency proceedings. Proceedings can be initiated by the debtor or creditors and in both cases the debtor must be insolvent (Articles 15 and 16). Additionally, creditors will need to prove the existence of an outstanding matured debt. The debtor is furthermore obliged to submit a request for the initiation of the bankruptcy procedure within 60 days from the date on which the debtor knew or should have known that it has become insolvent. Insolvency proceedings cannot be opened with respect to public entities, which are governed by administrative law. Public or state-owned companies that are established according to private law, are subject to bankruptcy. The decision on whether insolvency proceedings will continue with reorganisation of the debtor is decided by the creditors' assembly that can mandate the insolvency practitioner to draft a reorganisation plan.

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**

Is there any court involvement?

Yes, both procedures are overseen by a single judge in the commercial division of the relevant court. The expedited reorganisation procedure is conducted partially out of court.

Are there any hybrid reorganisation procedures?

Yes, the expedited reorganisation procedure. Under this procedure a plan may be drafted before commencement of the procedure and requires the consent of creditors representing 30 per cent or more of the total claims. The actual voting and approval of the plan then takes place during a court-supervised process.

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

Expedited reorganisation procedure

Yes, the debtor is able to manage and dispose of its assets in the ordinary course of business. However, any transactions outside of the ordinary course of business and any extraordinary acts need to be approved by the monitoring insolvency practitioner (Article 125).

Reorganisation procedure

Yes, where the debtor initiates insolvency proceedings, subject to a number of restrictions (Article 60.1). These include that the debtor's rights are limited to actions of ordinary administration and are subject to general control by the supervising insolvency practitioner and the debtor cannot perform actions that are within the ordinary course of business, but are opposed by the insolvency practitioner. However the insolvency practitioner or any creditor may request at any time from the insolvency court the complete or partial removal of the administration and disposal rights of the debtor, on the basis of the existence of a risk to the property and creditors' interests.

No, where insolvency proceedings are initiated by creditors. As an automatic consequence, the debtor's right to manage and dispose of its assets is then vested in the insolvency practitioner (Article 60.2).

Is there a need to appoint an insolvency practitioner?

Expedited reorganisation procedure

The court appoints an insolvency practitioner in its judgment commencing expedited reorganisation proceedings (Article 124). The role of the insolvency practitioner is to supervise the debtor, authorise acts of disposition and other duties contemplated by the Insolvency Law.

Reorganisation procedure

Following a petition to open insolvency proceedings, the court may appoint a temporary insolvency practitioner to monitor the debtor or replace its management and to protect the insolvency estate, before reaching a decision on formal commencement of proceedings (Article 22). Once proceedings are opened, the court appoints a permanent insolvency practitioner (Article 29.2). The requirements, liabilities and powers of the insolvency practitioner are set out from Article 42 onwards.

Furthermore, on an exceptional basis, the insolvency court can appoint one or more experts if requested by the parties or if the court deems it necessary to analyse matters that are objectively outside the scope of knowledge and expertise of the insolvency practitioner (Article 28).

Is there any applicable stay or moratorium?

Expedited reorganisation procedure

Yes, commencement of expedited proceedings will stay all executions over the assets of the debtor provided these are necessary for the continuation of the business activity (Article 126). New actions and execution proceedings against the debtor may be started, but no property of the debtor may be attached or foreclosed during the proceedings.

Reorganisation procedure

Yes, once the insolvency procedure is commenced, no economic claims may be filed against the debtor (Article 69). No new executions over the property of the debtor may be filed, and those started must be stayed. The moratorium is not applicable to creditors with an exclusion right (namely, any person holding an ownership right recognised by the law over an asset in possession of the debtor shall be entitled to claim the exclusion (separation) of such asset from the insolvency estate). With regard to secured creditors, the moratorium only applies to claims held by secured creditors to the extent that the security is granted over an asset that is necessary for the continuation of the business or professional activity of the debtor. With respect to secured creditors, the stay only applies for a period of six months or until a reorganisation plan is approved, whichever happens first.

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

Expedited reorganisation procedure

There is no express provision protecting essential contracts or preventing parties from including termination provisions based on insolvency. However, executory contracts will not be affected by the commencement of the proceedings (Article 126.3).

Reorganisation procedure

Yes, with respect to termination of contracts by third parties. Any agreement or clause in a contract to which the debtor is a party that allows or provides for the early termination of the contract based exclusively on the opening of insolvency proceedings will be void (Article 73). There are no express provisions protecting essential contracts.

Is new financing protected by law?

Expedited reorganisation procedure

There are no provisions governing new financing in the expedited reorganisation procedure.

Reorganisation procedure

Yes, the insolvency practitioner jointly with the debtor (where the debtor remains in possession) may borrow new money for the continuation of the business as a going concern where it is essential for the continuation of the debtor's business (Article 30). Any loans are treated as administrative expenses and therefore benefit from priority ahead of unsecured creditors (Article 35). If a reorganisation procedure is converted into a liquidation procedure, any priority given to such borrowings in reorganisation is recognised in liquidation. Creditors providing new financing are paid as they due and before all the other creditors.

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

Expedited reorganisation procedure

The formation of classes for the approval of the expedited reorganisation plan are the same as those foreseen for the reorganisation plan (Article 131.5). Furthermore, if creditors do not attend the creditors' assembly they are deemed to have voted in favour of the plan.

Reorganisation procedure

Article 99 specifies that for the purpose of voting on the plan, creditors will be divided into separate classes based on the order of priority set out in Article 144. This recognises the priority of: first, secured creditors (creditors with a valid security right including pledge, mortgage, or any other type of security rights recognised by the civil code or other special laws); second, preferred creditors (creditors whose claims are related to dismissal, work and health matters, spousal support or maintenance payments, tax obligations, etc.); third, unsecured creditors (creditors whose claim cannot be classified as secured, preferential or subordinated); fourth, subordinated creditors (creditors of penalties for late payment or for obligation derived from criminal offences, claims that both the creditor and the debtor agree to classify as subordinated, etc.); and fifth, partners, shareholders, founders and members of the debtor in their capacity as such. However, neither subordinated creditors nor shareholders, partners or owners of the legal entity shall have a vote unless the plan provides for a change in the capital structure of the debtor (Article 99.3).

Additional classes will be formed for each of the sub-categories of preferential claims and can be formed for each of the other tiers of creditors (Article 99).

What are the majorities required to approve a reorganisation plan?

Expedited reorganisation plan

The formation of classes and majorities for the approval of the expedited reorganisation plan are the same as those foreseen for the reorganisation plan (Article 131.5).

Reorganisation plan

Discussion and voting on the reorganisation plan is conducted during the voting meeting. The meeting is validly constituted when the attending or represented creditors constitute at least 50 per cent of the total amount of claims or, alternatively, creditors holding or representing 50 per cent of the total claims minus secured and subordinated creditors are present (Article 104).

The plan is approved if creditors representing a majority in value of claims present or represented by proxy vote in favour of the plan in each class (Article 108). If the plan provides for a write-down of more than 50 per cent of the value of claims or for a rescheduling for more than five years, the majority threshold for the affected class increases to creditors representing 65 per cent or more of the value of the claims. If the plan provides that one group of creditors within the same class will be treated differently, those prejudiced by the special treatment need to accept the plan in a separate vote by a majority.

The majority requirements are subject to cross-class creditor cram down provisions. Thus, should the plan not receive the consent of the required majority in each class, the plan may still be approved if creditors in the dissenting class would not be worse off under the plan than they would be in case of liquidation of the debtor; are not unfairly discriminated with respect to creditors in other classes of the same rank; and no class receives more than the (full) amount of its claims.

Who does the reorganisation plan bind?

Expedited reorganisation procedure

The same rules apply as for the reorganisation procedure (Article 132).

Reorganisation procedure

Following confirmation of the plan by the court, the content of the plan is binding on all creditors (Article 115).

Additionally, if rights on movable assets are established or revoked in the plan, or if stock or shares of limited liability entities are transferred, the consent of the parties shall be deemed to have been submitted in the form required by the law. Also, if the plan affects the membership or share rights in the debtor, any agreement of the partners or shareholders of the debtor, and any consents required from those parties shall be deemed to have been made in the form required by law (Article 116).

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

The law prescribes certain timeframes for specific aspects of the procedures but no overall timeframe for either procedure. Each applicable moratorium lasts for the duration of the relevant procedure, subject to a maximum limit of six months for secured creditor claims only for the reorganisation procedure.

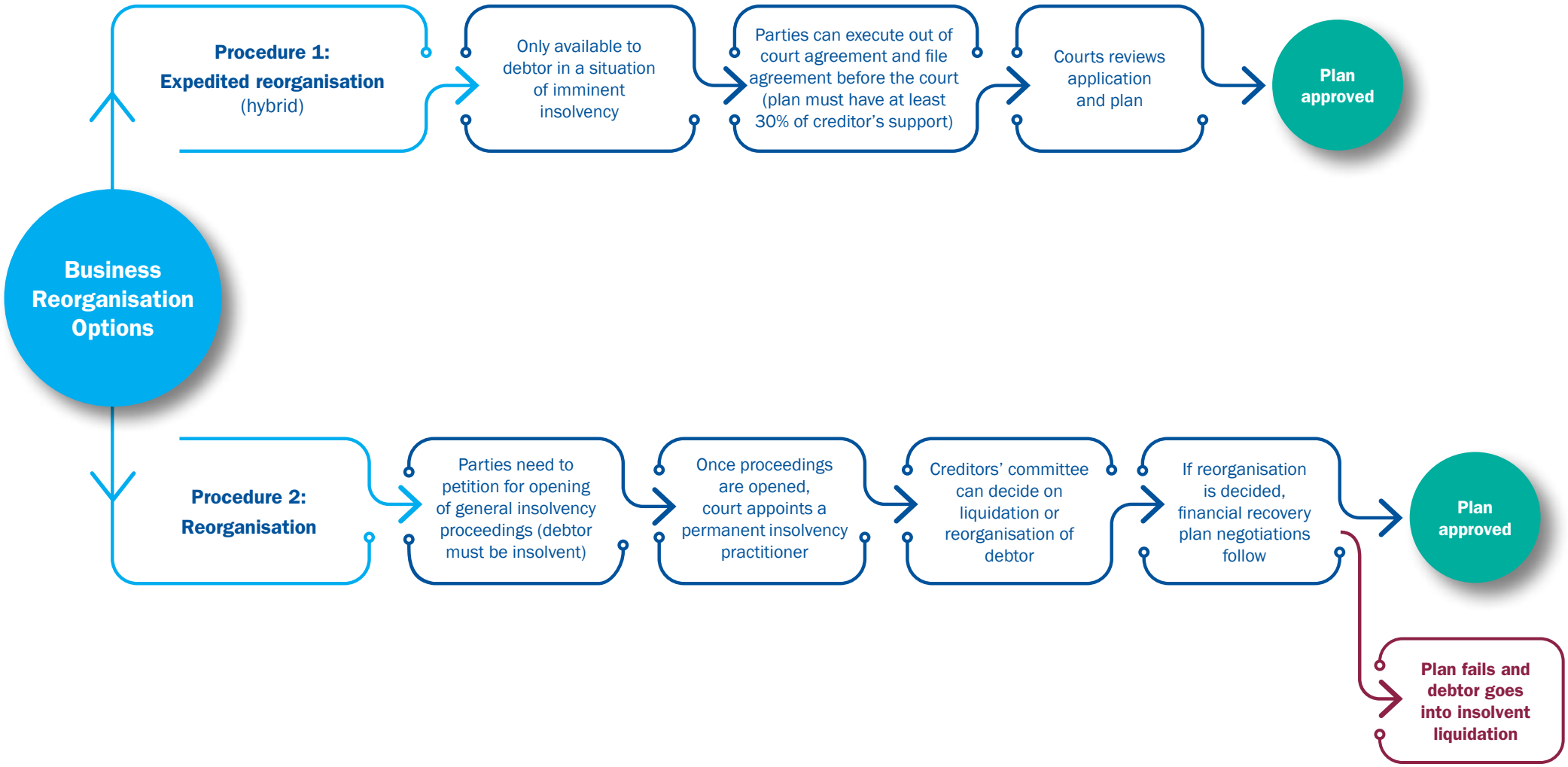
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

Not officially. However the Insolvency Law contains chapters on access of foreign representatives to the Albanian courts, recognition of foreign insolvency proceedings and relief and cooperation with foreign courts and foreign representatives.

Special features/observations:

- In Albania there has historically been low use of insolvency proceedings.
- Albania is one of the few economies where we operate that has developed provisions on cross-border insolvency and that has a cross-class cram down mechanism in its insolvency legislation.

Overview of Albanian Business Reorganisation Procedures*



* This provides a high-level overview of business reorganisation procedures only. See the commentary in this profile and the Insolvency Law for further details.

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