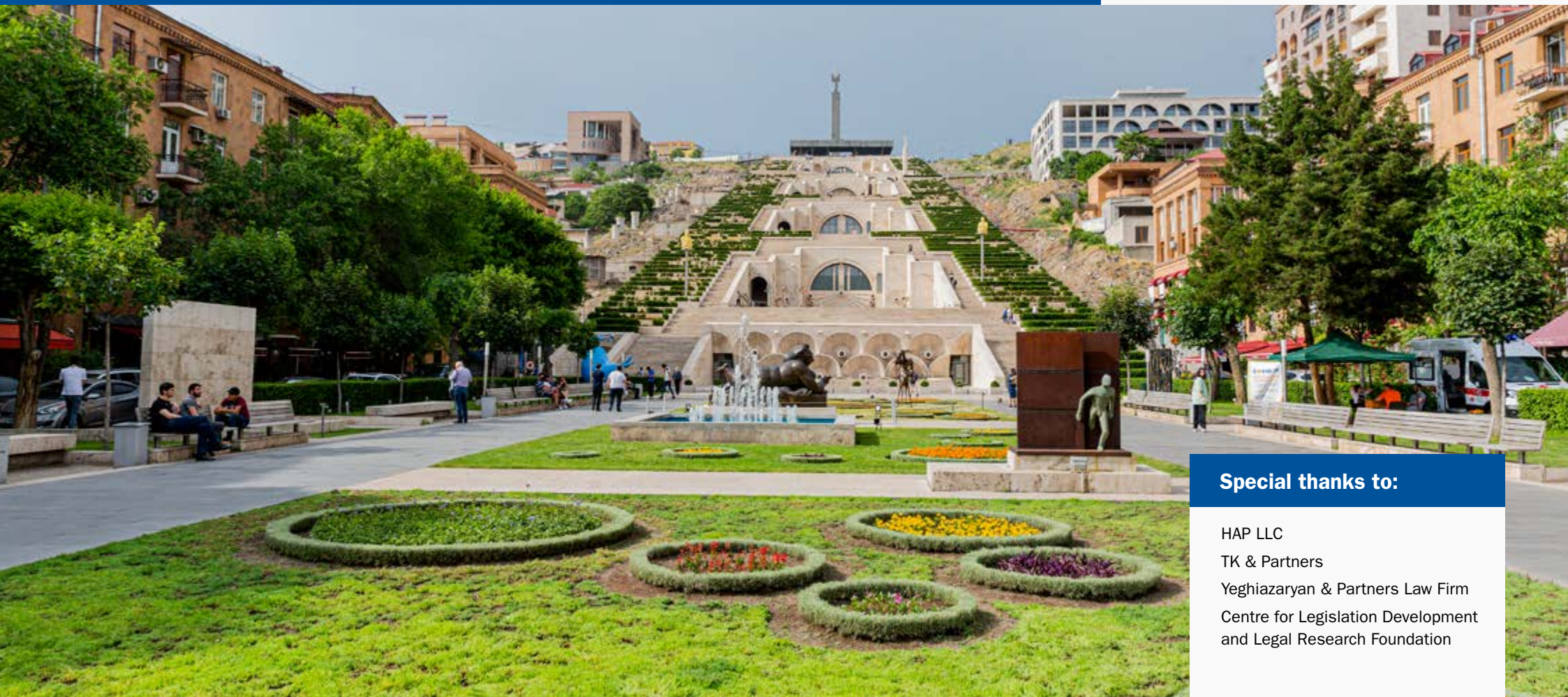
Business Reorganisation Assessment

Armenia

European Bank
for Reconstruction and Development



Special thanks to:

HAP LLC

TK & Partners

Yeghiazaryan & Partners Law Firm

Centre for Legislation Development and Legal Research Foundation

Part A

General Information

Macro Data

2.970	1.0%	US$ 4,130	֏ Armenian dram – AMD	18%	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 primary legislative text governing bankruptcy proceedings for legal and natural persons in Armenia is the **Law on Bankruptcy of the Republic of Armenia** (the Insolvency Law) adopted on 25 December 2006 (as amended).

Insolvency Data

Data on insolvency cases can be accessed at: **datalex.am** and can specifically be found **here**. Other notifications on insolvency cases can be found at: **www.azdarar.am**.

Since 2019, insolvency proceedings in Armenia have been overseen at first instance by a single specialist insolvency court (the Insolvency Court). Prior to this date, cases were heard by first instance courts of general jurisdiction throughout Armenia. In 2020, 3,225 submissions were presented to the Insolvency Court of Armenia, out of which 2,135 were accepted, 1,082 were returned, and 8 submissions were rejected. From the 3,225 submissions, 618 were related to corporates, 173 to entrepreneurs and 2,434 to consumers. A total of 55 financial recovery plans were submitted to the Insolvency Court. Out of the 55 plans, 41 of were adopted: 16 of these plans were related to corporates, 8 were related to entrepreneurs and 17 were related to consumers.

A total of 1,897 bankruptcy cases were completed in 2020, with 7,106 cases pending (including 6868 cases transferred from the previous year). The Insolvency Court made 1,771 decisions on insolvency, 451 of which were related to corporates, 1,213 were related to consumers and 107 to entrepreneurs. In 104 cases the submission to declare the debtor insolvent was rejected. The number of unfinished cases is 7,106 and 615 cases have been appealed.

The Insolvency Court is also responsible for adjudicating all civil disputes related to the property or rights of the debtor once the debtor is in bankruptcy proceedings.

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

[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

Company Information

The Armenia company law framework is governed mainly by the Civil Code of Armenia, the Law on Joint Stock Companies, the Law on Limited Liability Companies and the Law on the State Registration of Legal Entities, Separated Subdivisions of Legal Entities, Enterprises and Individual Entrepreneurs and the Law on Individual Entrepreneurs. The Agency for State Register of Legal Entities within the Staff of the Ministry of Justice of the Republic of Armenia (the Agency) is the body in charge of registration of legal entities and entrepreneurs. Information about companies (other than financial institutions) is contained in the State Register of Legal Entities maintained by the Agency. The register is available at: **www.e-register.am/en/**.

Limited information in the register is available free of charge, however according to the Law on State Fees, parties must pay a state fee to obtain copies of complete information about a legal entity from the register, as well as the constitutional documents of such entity.

Insolvency Courts, Regulatory Authorities and Practitioners

The Ministry of Justice maintains a register of authorised insolvency practitioners. This can be accessed at: **www.moj.am/en/managers/browse**

Other than the Insolvency Court, the Ministry of Justice is the main regulator and authority responsible for the insolvency of legal and natural persons (excluding financial institutions). The Ministry of Justice is supported by the self-regulatory organisation (SRO) of insolvency practitioners. The SRO is responsible for ensuring that its members adhere to SRO rules of professional ethics and for providing training to its members.

Continue to Part B →

Part B

Business Reorganisation

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

Not specifically, however parties may enter into a reconciliation agreement following an application for opening of bankruptcy proceedings and before expiry of the time period for withdrawing such application (Article 18).

What is the nature and purpose of the reorganisation procedure?

There are two routes into reorganisation under the Armenian Insolvency Law. The first is the filing for an imminent or 'threatened bankruptcy' procedure (սնանկության վտանգ) (threatened bankruptcy) by the debtor in order to present a financial recovery plan (Ֆինանսական առողջացման ծրագիր). The second is the filing for opening of a bankruptcy procedure (Սնանկության գործընթաց) by the debtor (voluntary bankruptcy) or by a creditor (involuntary bankruptcy), which may lead to the liquidation of the debtor's estate or to the approval of a financial recovery plan. **Click here** for a high-level overview of the Armenian business reorganisation framework.

The purposes of the reorganisation procedures and financial recovery plan are to restore the solvency of the debtor, to avoid liquidation and to repay amounts owed by the debtor. The financial recovery plan may provide, among other matters, for sale of the whole or part of the debtor's property, transfer of the debtor's property to creditors through set-off, termination of unprofitable activities, amendment or termination of unprofitable transactions, and debt restructuring (including a debt write-off) (Article 59(3)). A strict time limit of 36 months applies to the initial period for implementation of the financial recovery plan, however this may be extended by a further 12 months by court decision (Article 66(2)). The overall maximum duration of the financial recovery plan is 72 months (Article 66(3)).

Who can commence the process and what entry conditions apply?

Threatened bankruptcy

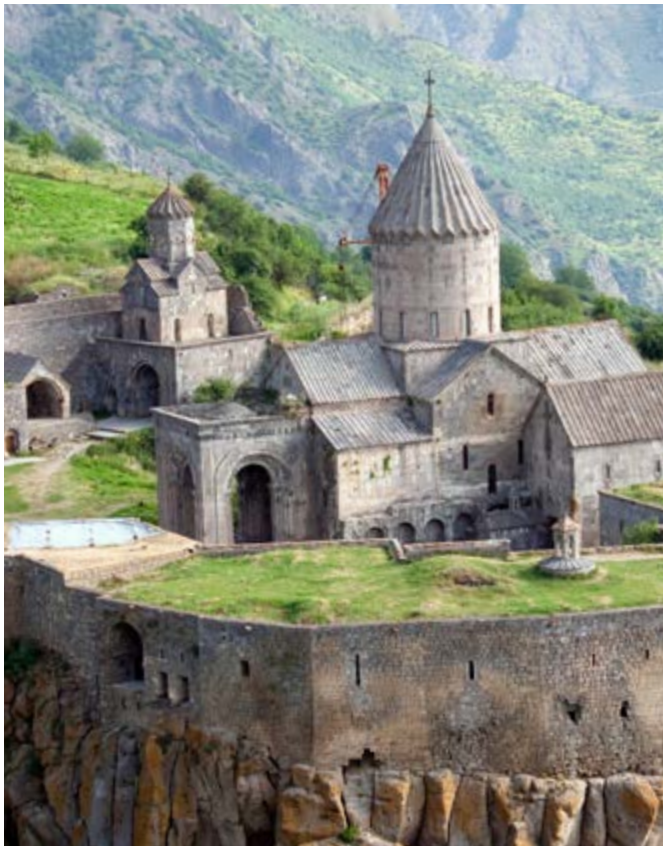
Only the debtor may file an application for threatened bankruptcy (Article 3(2(2.2))), accompanied by a proposed financial recovery plan (Article 12 (1(h))). A threatened bankruptcy is presumed if it is evident that grounds for recognising the debtor's bankruptcy as defined by the Insolvency Law will occur (see bankruptcy grounds below).

Bankruptcy

An application for involuntary bankruptcy may be submitted by one or more creditors jointly where the debtor's debt exceeds 2 million dram (approx. €3,200), the obligation is overdue for more than 90 days and the debt is substantiated by a document or a court decision (Articles 3 and 10).

An application for voluntary bankruptcy may be submitted on behalf of legal entities by their authorised bodies or representatives and on behalf of a natural person, by such person or a representative where the debtor has liabilities exceeding 2 million dram (approx. €3,200) and the debtor's assets were valued at less than 2 million dram (approx. €3,200) (Articles 3 and 10).

A financial recovery plan may be submitted by the debtor jointly with the submission of the application for the declaration of its own bankruptcy, the insolvency practitioner, creditors holding at least one third of secured claims, creditors holding at least one third of unsecured claims, as well as persons holding at least one third of the statutory equity or share capital in the debtor (Articles 12(2) and 60(1)).



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, all reorganisation procedures are conducted under the supervision of the Insolvency Court.

Are there any hybrid reorganisation procedures?

There are no hybrid procedures, however a financial recovery plan should be prepared out of court prior to filing an application for threatened bankruptcy.

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

Threatened bankruptcy

Yes, with some limitations. When the court judgment on acceptance of the debtor's application enters into force, the debtor's executive body is supervised by an insolvency practitioner and the powers of the debtor's executive body to manage and dispose of the debtor's property are suspended. The suspension of management rights continues throughout the implementation of the financial recovery plan (i.e., for an initial maximum period of 36 months) (Article 15.4(3)), which may be extended up to a maximum period of 72 months by court decision (Article 66(3)).

Prior to any decision by the court on a financial recovery plan, the debtor may continue performing certain tasks or services, including acquisitions, in the ordinary course of the business, where any failure to do so would result in unfavourable consequences for the debtor. Such activities require approval from the insolvency practitioner and a court decision (Article 55). In certain circumstances, the insolvency practitioner may also sell property belonging to the debtor, where such property has significant associated maintenance expenses.

Bankruptcy

Yes, for a limited period only. On commencement of bankruptcy proceedings, the court appoints a temporary insolvency practitioner to analyse the debtor's financial condition and to organise and protect inventory. However a bankruptcy judgment by the court results in suspension of all shareholder and management rights and replacement of the temporary insolvency practitioner with a permanent practitioner. The permanent insolvency practitioner assumes management of the debtor's operations (Article 19) and the debtor is required to act in accordance with the instructions of the insolvency practitioner and its management is prohibited from disposing of property or entering into any operation that would give rise to liabilities without the approval of the practitioner (Article 47 (2)).

Is there a need to appoint an insolvency practitioner?

Yes, an insolvency practitioner is mandatory in all cases. The persons entitled to be appointed as insolvency practitioners and their duties and powers are set out in Articles 22 and 29.

Is there any applicable stay or moratorium?

Threatened bankruptcy

Yes, a moratorium automatically arises once the court judgment on opening of the threatened bankruptcy procedure enters into force. However, secured creditors can enforce the security out of court if the court permits (Article 15.5(2)). A moratorium remains in place until the closing date of the financial recovery plan (Article 15.5(4)).

Bankruptcy procedure

Yes, a moratorium automatically arises once the court judgment on opening of the bankruptcy proceedings enters into force. The moratorium protects the debtor's estate from any alienation and/or encumbrance and suspends all enforcement proceedings and collection with respect to the debtor's property and rights. It also limits set-off rights. From the declaration of insolvency and with certain exceptions, any pending enforcement cases are terminated. However, secured creditors can enforce the security out of court if the court permits (Article 39.3). A moratorium remains in existence until completion of the bankruptcy case (Article 39(6)).

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

There are no general restrictions preventing contractual counterparties from terminating contracts on the basis of the commencement of bankruptcy or threatened bankruptcy proceedings. However, creditors that provide the debtor with utility services, including electricity, natural gas, water and telephone connections, may not refuse, reject or cease to supply their services as a result of the debtor being declared bankrupt by the court, provided that the debtor regularly makes payments for the mentioned services in a timely manner (Article 49). This provision applies to both the bankruptcy procedure and the threatened bankruptcy procedure.

Is new financing protected by law?

Yes, with respect to the financial recovery plan only. Creditors who have provided new financing obtain a priority of repayment before the administrator's remuneration and the administrative expenses and all other creditors, unless otherwise provided in the plan (Articles 15.7 and 61(5)). The consent of the new financing provider is mandatory for approval of the financial recovery plan.

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

No, the law does not set out any classes of creditors for voting purposes on the financial recovery plan in either of the reorganisation procedures. It provides that only creditors with approved claims may participate in the voting and excludes the claims of the founders of the debtor (participants, shareholders, members or partners) and secured creditors. Secured creditors may vote on a plan, however, if all creditors are secured creditors. Creditors with claims deriving from monetary obligations to the state budget may take part in voting in the manner and circumstances prescribed by the government (Article 63(2)). In practice, creditors vote as one unsecured group of creditors.

What are the majorities required to approve a reorganisation plan?

Bankruptcy

The financial recovery plan is deemed to be adopted if a simple majority by number of creditors present at the creditors' meeting vote in favour of the plan (Article 63(3)). Only creditors with approved claims may take part in voting. As described above, certain creditors are excluded.

The financial recovery plan may not provide for any ranking of creditors' claims other than that provided for by the Law unless the creditors so consent (Article 61(2)). Secured creditors need to consent any use of secured property as part of the financial recovery plan (Article 61(4)). The financial recovery plan cannot result in any of the creditors being in a less favourable condition than if the debtor were liquidated, in each case without the written consent of the relevant creditors (Article 61(2)).

If adopted by the required majority of creditors, the financial recovery plan should be approved by the court (Article 64).

Threatened bankruptcy

Approval of the financial recovery plan by the court under this procedure requires approval of either all creditors or creditors holding rights to at least 60 per cent of the total claims (in value) and is based on the results of the discussion of the application, as well as on creditors' objections and suggestions at the court session (Article 15.3(3)). Secured creditors do not vote on the plan but a secured right can be included in the plan where the secured creditor has received equivalent protection.

Who does the reorganisation plan bind?

Bankruptcy

As the financial recovery plan is confirmed by a court decision, a plan concluded in bankruptcy proceedings binds all persons having an interest in the matter. This includes the debtor and any creditors affected by the plan (provided they have taken part in the voting process or have been notified of this) (Article 64). Secured creditors are not bound by the plan (Article 63) but in practice they can be so bound where all creditors are secured creditors and a majority has voted in favour of the plan.

Threatened bankruptcy

The plan binds any dissenting creditors provided such creditors are not in a less favourable position than they would be in a liquidation. Secured creditors are not bound by the plan other than where a secured asset has been used and the creditor has been provided with equivalent protection (Article 15.3).

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

Bankruptcy

The financial recovery plan must be submitted prior to the first meeting of creditors which is required to take place between 30 and 40 days from the date of the court's decision to approve the final list of claims (Article 19). This deadline can be extended by 30 days on the motion of the person entitled to submit the plan (Article 60(2)). The insolvency practitioner must convene a meeting within 20 days of the deadline for voting on the plan.

The time period for the implementation of the financial recovery plan may not exceed 36 months for the initial plan, subject to a maximum extension of up to 72 months in total (Article 66(3)). The insolvency practitioner is required to report to the court on implementation of the plan at least once every quarter.

A moratorium arises from the moment the court accepts the bankruptcy application until completion of the bankruptcy case (Article 39).

Threatened bankruptcy

Following approval of the debtor's application, the judge sets the date for a case hearing within one month. Upon the creditors' motion, the court may extend the hearing for up to 90 days. After the creditors approve or reject the plan, the court has to issue the final judgment.

A moratorium arises from the moment of entry into force of the court judgment on granting the application on risk of bankruptcy until approval of the financial recovery plan (Article 15.5(1)).

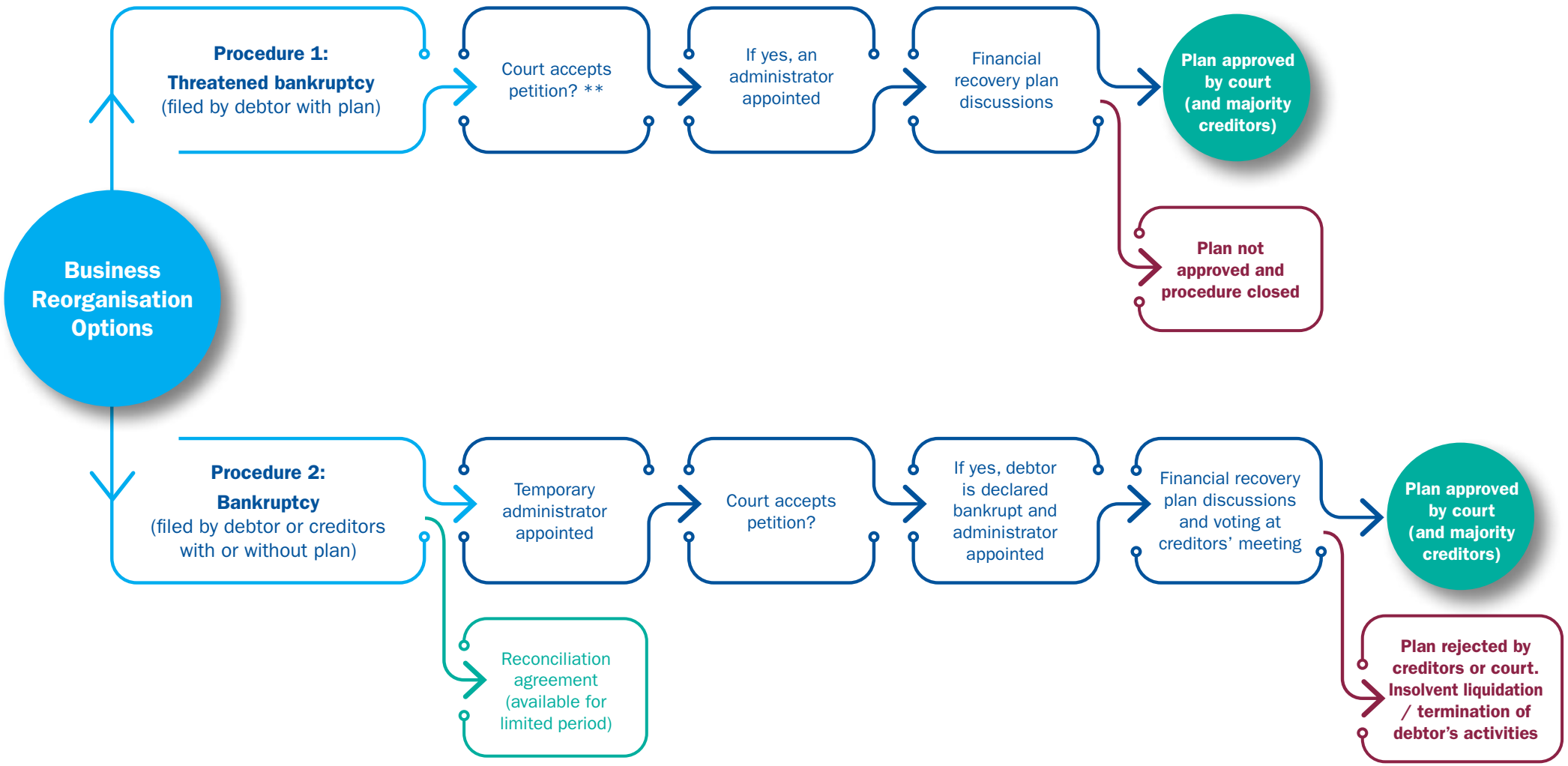
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, the UNCITRAL Model Law has not been adopted and there are no provisions on cross border insolvency including cooperation with foreign courts and representatives in the Insolvency Law.

Special features/observations:

- Armenia is one of the few economies where we invest with a dedicated first instance Insolvency Court, which began operations in 2019.
- The financial recovery plan is used not only for corporates and entrepreneurs but also for consumers.

Overview of Armenian Business Reorganisation Procedures*



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

** The court may reject the petition if the grounds for threatened bankruptcy do not exist and declare the debtor bankrupt, by application of the debtor, if grounds for bankruptcy exist.

Contact

Catherine Bridge Zoller
Senior Counsel
Legal Transition Team
European Bank for Reconstruction & Development
LTTRestructuring@ebrd.com

13472/0921 Designed by Red Rocket Graphic Design | **www.redrocket.co.uk**

European Bank
for Reconstruction and Development