

Business Reorganisation Assessment

📍 Belarus



European Bank
for Reconstruction and Development



Special thanks to:

Deloitte

Egorov Puginsky Afanasiev &
Partners

Part A

General Information

Macro Data

9.408	-0.4%	US\$ 6,490	Br Belarusian ruble – BYN	18%	6.9%	4.5%
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 in Belarus is the **Law on Economic Insolvency (Bankruptcy)** No. 415-3 (the Insolvency Law) dated 13 July 2012 (as amended). The Insolvency Law covers businesses including legal entities and entrepreneurs, but not consumers.

Insolvency Data

The Ministry of Economy of Belarus is the government body responsible for the Unified State Register on Bankruptcy Information which maintains all data available for insolvency cases. Some insolvency-related statistics (such as the number of cases in each stage as of the date of access), as well as information on initiated insolvency proceedings is available on the Register website: **bankrot.gov.by**

The Ministry of Economy also publishes regular statistics overviews, including an insolvency bulletin at: **www.economy.gov.by/ru/statistika-ru/**

Number of rehabilitation cases⁴

Type of borrower	As of 1 January 2019	As of 1 July 2019	As of 1 January 2020	As of 1 July 2020	As of 1 January 2021
State-owned enterprises	107	104	97	94	40
Private businesses	23	21	18	16	18
Total	130	125	115	110	58

Number of liquidation cases

Type of borrower	As of 1 January 2019	As of 1 July 2019	As of 1 January 2020	As of 1 July 2020	As of 1 January 2021
State-owned enterprises	73	75	87	88	101
Private businesses	1,425	1,269	1,168	1,031	930
Individual entrepreneurs	129	157	163	141	208
Total	1,627	1,501	1,418	1,260	1,239

¹ IMF – Source as of June 2021:
www.imf.org/en/Countries/BLR

² Deloitte – Source as of June 2021:
www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-corporate-tax-rates.pdf

³ The Unified State Register of Bankruptcy Information can be accessed at: **bankrot.gov.by/**

⁴ The rehabilitation procedure only applies to legal entities



Company Information

The company law framework is governed by the **Civil Code** No. 218-3, dated 7 December 1998 (as amended) and the **Law on Commercial Companies** No. 2020-XII, dated 9 December 1992 (as amended). Information about companies in Belarus is available in the Unified State Register of Legal Entities and Individual Entrepreneurs: egr.gov.by/egrn/.

Official statistical data regarding the overall number of companies in Belarus is available [here](#).

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency (bankruptcy) court cases are dealt with by courts that deal with economic cases within the general court system. The competency of the court is established based on the debtor's legal seat of operations in respect of legal entities or residence in respect of individuals (i.e., within the territorial jurisdiction of the relevant regional court). The regulatory authority for insolvency proceedings is the Rehabilitation and Insolvency Department of the Ministry of Economy of Belarus. The Department is responsible for ensuring the proper functioning of the business insolvency (bankruptcy) framework by, among other matters, exercising certain functions with respect to insolvent state-owned enterprises, developing proposals on the improvement of legislation, and developing the training programmes for and certification process of insolvency practitioners.⁵

The Unified State Register on Bankruptcy Information has a register of certified insolvency practitioners: bankrot.gov.by/Managers.

⁵ www.economy.gov.by/uploads/files/Pologenie-DSB-2.pdf

Part B

Business Reorganisation

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

No, there are no specific incentives for concluding an extrajudicial voluntary agreement. However company management, owners and shareholders are obliged to undertake certain pre-trial rehabilitation (досудебное оздоровление) measures as part of the rehabilitation procedure, which can include extrajudicial voluntary agreements with creditors (Article 17). This may be accompanied by state support in accordance with applicable legislation (Article 18), although this provision seems to be used only for SOEs in practice.

What is the nature and purpose of the reorganisation procedure?

There is one gateway into insolvency proceedings which can be initiated by the debtor, its creditors, the public prosecutor, employee representatives as well as the state body responsible for insolvency and the state body that has the right to make decisions on collection of mandatory payments. This may lead to the liquidation of the debtor's estate or to the approval of a rehabilitation plan or an amicable agreement.

Click here for an overview of the rehabilitation procedure.

Following the commencement of the insolvency case, the court establishes a protection period of up to three months that can be extended up to three years in total by the court. The protection period enables the court and the creditors to decide whether there are reasons to believe that solvency can be restored (and thus a rehabilitation procedure can be devised), if an amicable agreement is possible, or if liquidation seems the only remaining option.

Rehabilitation procedure

The purpose of the (in-court) rehabilitation procedure (санация) is ensuring the stable and efficient performance of the debtor, as well as restoring its solvency.

The rehabilitation plan can provide for measures including: performance of the debtor's obligations by the owner or shareholders; sale of debtor's property; deferral of mandatory payments; sale of the debtor business as a whole (including property and any rights); and issuance of additional shares (Article 126). The rehabilitation procedure may last for up to 18 months. This term can be shortened or extended by the court based on the request of the creditors' meeting or the insolvency practitioner, but cannot be extended for more than 12 months. At the request of a state authority and as agreed with the Council of Ministers of the Republic of Belarus, the rehabilitation procedure may be extended by the economic court for up to five years subject to certain conditions and an opinion on the rehabilitation plan issued by the Commission for the Prevention of Economic Insolvency (bankruptcy) (Article 125).

Amicable agreement

An amicable agreement (мировое соглашение в производстве по делу об экономической несостоятельности (банкротстве)) involves an agreement between the debtor, its creditors and third parties on the settlement (i.e. payment) of debts. The agreement may provide for the release of the debtor from debt; reduction of the amount of debt; payment by instalments (deferral); as well as change in the term of payment and similar. It may be reached at any stage of insolvency (bankruptcy) procedure in order to terminate the insolvency case once approved by the court (Article 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**

Who can commence the process and what entry conditions apply?

Commencing the insolvency case

The debtor has the right to file for insolvency if: the debtor's insolvency is becoming persistent; or the debtor's insolvency has become persistent (Article 9). However, the debtor must file for insolvency if: satisfaction of the claims of one creditor or several creditors would lead to the impossibility of fulfilling the debtor's monetary obligations in full to other creditors or the termination of the activity of the debtor; or the body (persons) authorised to make a decision on the debtor's liquidation, or the owner of the debtor's property (for unitary enterprises) made a decision to file for insolvency; or if the assets of the company that is being liquidated according to company legislation are insufficient to cover the creditors' claims.

The creditor may file for the debtor's insolvency if all these conditions are met (Article 12): the creditor has reliable, documented information about the debtor's insolvency, which is or is becoming persistent; enforcement against the debtor is taking more than three months or it was revealed during the enforcement that the debtor's assets are not sufficient to cover the creditor's claim; and the creditor's claim exceeds 100 base units – approx. €930 in total (higher thresholds may be applicable to certain types of debtor).



Rehabilitation procedure

The court takes a decision on commencing insolvency proceedings known as bankruptcy proceedings (конкурсное производство) following the protection period if: the debtor's insolvency is persistent; the debtor is unable to fulfil payment obligations and/or make payments for obligations arising from labour and related relations within the prescribed period due to insolvency, and this is becoming persistent; or there are other circumstances indicating the debtor's insolvency (Article 84).

Insolvency proceedings may result either in rehabilitation or insolvent liquidation of the debtor. The court decides whether to initiate the rehabilitation procedure based on the decision of the creditors' meeting or at its own initiative, e.g., when there are differences of opinion between the temporary insolvency practitioner and at the creditors' meeting regarding the rehabilitation plan of the debtor (Article 125). The rehabilitation procedure is only available for legal entities.

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. A decision to adopt an amicable agreement is made by a majority of all weighted votes of bankruptcy creditors from the total number of weighed votes of bankruptcy creditors once the insolvency case has been opened and the claims of the first and second priority creditors have been paid (Article 152).

Is there any court involvement?

The court is actively involved throughout the process and may prescribe that the debtor carries out pre-trial rehabilitation if it: establishes that the enforcement of the creditor's claim would preclude the debtor from continuing business activity (Article 20); upon the application of the persons listed in Article 8, opens an insolvency case which leads to commencement of the protection period; following the review of the insolvency case, takes the decision on commencing the rehabilitation or liquidation procedure or closing the insolvency case (Article 49); and approves any amicable agreement (Article 152).

Are there any hybrid reorganisation procedures?

No, there are no hybrid reorganisation procedures under the Insolvency Law.

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

Yes, as described below, the debtor remains in possession throughout the initial protection period and pre-trial rehabilitation stage but its management functions cease once insolvency (bankruptcy) proceedings are formally opened.

Protection period

Yes, as described below, the debtor remains in possession throughout the initial protection period and pre-trial rehabilitation stage but its management functions cease once insolvency (bankruptcy) proceedings are formally opened.

However, the parties to the insolvency case can request that the director of the company is dismissed by the court if its actions interfere with the activities of the insolvency practitioner or breach the rights and interests of the creditors. Also, if the court approves the plan for finalising the pre-trial rehabilitation during the protection period, the director of the company is replaced by the insolvency practitioner.

The debtor is precluded from taking certain decisions (such as corporate reorganisation, or liquidation or payment of dividends) and additional restrictions may be imposed by the court (Article 45).

Rehabilitation procedure

Once the insolvency (bankruptcy) procedure is initiated by the court, all functions related to management of the debtor and disposal of its assets are transferred to the insolvency practitioner (crisis manager) and the employment agreement with the debtor's director is terminated (Article 86).



Amicable agreement

Negotiations in relation to an amicable agreement occur within insolvency (bankruptcy) proceedings. If an amicable agreement is reached and is approved by the court, the insolvency (bankruptcy) case is terminated and the debtor's management powers are restored (Articles 1 and Article 155).

Is there a need to appoint an insolvency practitioner?

A temporary insolvency practitioner (temporary manager) is appointed when the protection period is launched (Article 39) with the company management still being active in certain cases (Article 45). Once an insolvency (bankruptcy) procedure is initiated by the court, all functions related to management of the debtor and disposal of its assets are transferred to the insolvency practitioner (crisis manager) who replaces the temporary insolvency practitioner and the debtor's management is dismissed (Article 86).

Is there any applicable stay or moratorium?

There is no automatic stay, but once the insolvency case has been opened proceedings on enforcement of creditors' claims can be suspended at the request of the debtor's management, the insolvency practitioner, or other persons such as other creditors, certain state bodies and an employees' representative. The stay may also include a suspension of execution of directly enforceable deeds or instruments (e.g. based on court rulings before the insolvency case was opened), with the exception of certain types of claims, e.g. severance payments or payments related to compensation for harm to a person's health or life (Article 37). After the initiation of insolvency (bankruptcy) proceedings, all creditors can only present their claims according to the procedure prescribed by the Insolvency Law and the satisfaction of the creditors' claims is suspended until the insolvency case is resolved (Article 86).

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

No, there is no protection for essential contracts and no general provisions preventing termination of contracts by third parties on the grounds that the debtor has entered into insolvency proceedings, including a reorganisation procedure.

Is there a provision for new financing?

Yes, with respect to the rehabilitation plan only. Provision of the new financing may be one of the measures to restore the debtor's solvency according to the rehabilitation plan (Article 126), and payments on obligations that arose after the commencement of the insolvency (bankruptcy) procedure are given priority as they are made out of turn (Article 141).

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

No. All creditors are represented in the creditors' meeting and bankruptcy creditors have voting rights which are weighted in accordance with the value of their claims compared to the overall amount of claims (Article 55).

Bankruptcy creditors are defined by law as any representative of the employees, and creditors having a payment claim that arose before the commencement of the insolvency (bankruptcy) procedure which is included in the register of creditors' claims, except individuals that performed work or services, or created objects of intellectual property for the debtor based on civil law contracts. Individuals with claims related to liability based on the debtor causing harm to their life and health are not bankruptcy creditors, and neither are founders/shareholders of the debtor with respect to claims arising from such shareholding. Bankruptcy creditors include secured creditors, as well as unsecured creditors.

What are the majorities required to approve a reorganisation plan?

Rehabilitation procedure

A simple majority of all weighted votes of all bankruptcy creditors is needed to adopt a rehabilitation plan (Article 57).

Amicable agreement

In order to approve an amicable agreement, the approval of all secured creditors is needed in addition to a simple majority of all weighted votes of all bankruptcy creditors (Article 152).

Weighting of votes

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

Who does the reorganisation plan bind?

Rehabilitation procedure

The rehabilitation plan approved by the creditors' meeting and/or the court (e.g. in the case of disagreements between the creditors' meeting and the insolvency practitioner) binds the creditors and the debtor. Any changes to the plan shall be approved by the creditors' meeting (Article 121).

Amicable agreement

An amicable agreement approved by the court binds the debtor, the bankruptcy creditors and participating third parties. Creditors that have not presented their claims and acquired the status of bankruptcy creditor prior to the creditors' meeting that adopted the amicable agreement are not bound by the terms of such agreement (Article 152).



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

Rehabilitation procedure

The rehabilitation procedure may last for up to 18 months. This term can be shortened or extended by the court based on the request of the creditors' meeting or the insolvency practitioner, but cannot be extended for more than 12 months. As described above, there is the possibility of a further extension to up to five years in total in certain circumstances (Article 125).

Amicable agreement

There is no timeframe for the negotiation of the amicable agreement. However, it has to be concluded within the timeframe of the applicable insolvency (bankruptcy) procedure.

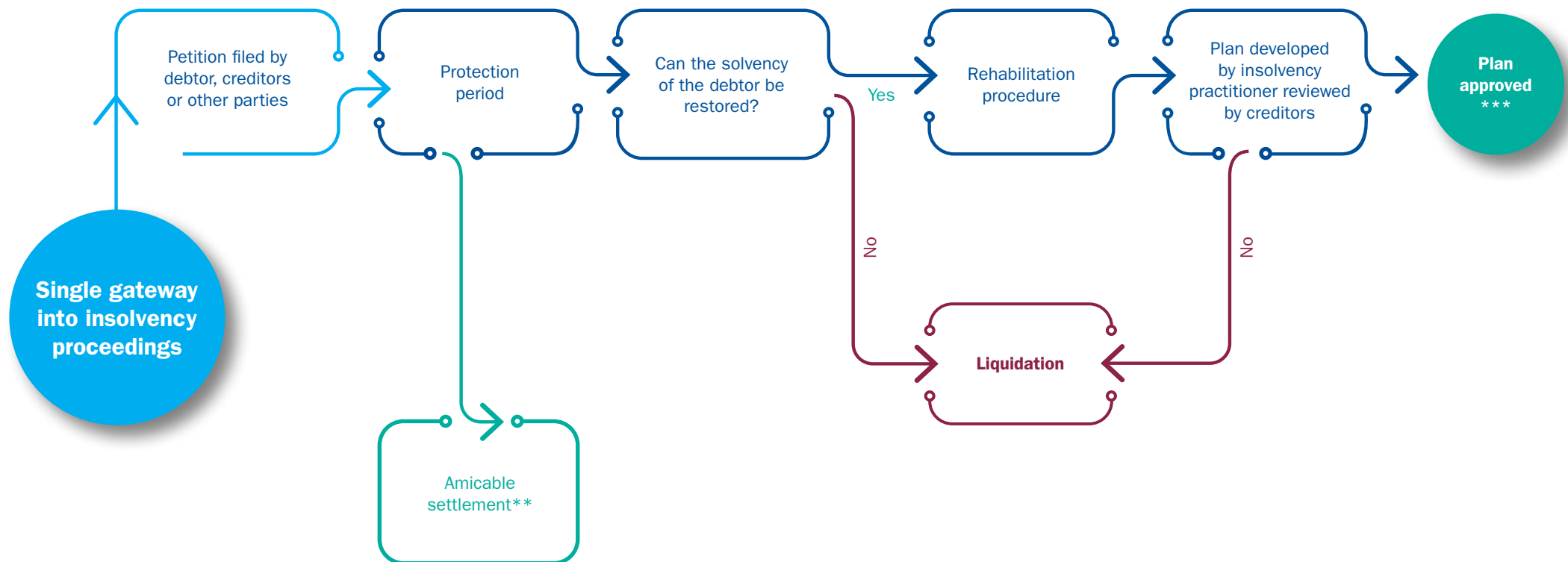
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, Belarus 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, Belarus has an amicable settlement mechanism that can be used alongside the existing insolvency (bankruptcy) procedure to reach a restructuring agreement.
- Rehabilitation plans for state-owned enterprises should be approved by the relevant state bodies (that the debtor is subordinated to or is a part of; or that manage state shares in the debtor company), who may request amendments to the plan.

Overview of Belarussian Business Reorganisation Procedures*



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

**Can be reached at any stage of the insolvency proceedings, including protection period, rehabilitation and liquidation procedures

***The creditors can also decide to replace the insolvency practitioner to develop another plan or adopt the suggested plan with amendments.

Contact

Catherine Bridge Zoller

Senior Counsel

Legal Transition Team

European Bank for Reconstruction & Development

✉ LTTRestructuring@ebrd.com

© European Bank for Reconstruction and Development, 2022

All rights reserved. Reproduction and dissemination of material contained in this publication for educational or other non-commercial purposes are authorised without any prior written permission from the copyright holders, provided the source is fully acknowledged and a notification is sent to: LTTRestructuring@ebrd.com.

The contents of this publication reflect the opinions of individual authors and do not necessarily reflect the views of the EBRD.

Terms and names used in this report to refer to geographical or other territories, political and economic groupings and units, do not constitute and should not be construed as constituting an express or implied position, endorsement, acceptance or expression of opinion by the European Bank for Reconstruction and Development or its members concerning the status of any country, territory, grouping and unit, or delimitation of its borders, or sovereignty.

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



European Bank
for Reconstruction and Development