Business Reorganisation Assessment

Federation of Bosnia and Herzegovina

European Bank
for Reconstruction and Development

Special thanks to:

CMS

Marić & Co Law Firm

Schönherr

Part A

General Information

Macro Data

3.279	3.5%	US$ 6,730	KM Bosnia and Herzegovina convertible mark – BAM	10%	1.2%	17.5%
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 the Federation of Bosnia and Herzegovina (FBiH) is the **Insolvency Act** (the Insolvency Law), published in the Official Gazette of FBiH, No. 53/2021 on 7 July 2021. In the absence of relevant provisions in the Insolvency Law, the Law on Civil Proceedings, Official Gazette of the FBiH, No. 53/03, 19/06, 98/15, will apply.

Insolvency Data

There is no specific requirement for the courts in the FBiH to collect and manage data on insolvency cases and there is no publicly available registry with data on insolvency proceedings. Insolvency cases are heard by municipal courts with organised commercial departments, i.e., 10 courts in the FBiH. There are no official lists of judges overseeing the insolvency proceedings.

However, information on the commencement of insolvency proceedings with respect to companies is noted in the publicly available company registries. Decisions on initiating and closing insolvency proceedings are published on the court's noticeboard and in the Official Gazette, as well as on the applicable court website.

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

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

Company Information

The company law framework is governed by the Law on Companies, Official Gazette of the FBiH No. 81/15. The company registries are administered by the courts and a centralised online registry for the Federation established by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina is available **here**. The website allows a search of registered entities free of charge. However, it does not include insolvency-related data, apart from information on whether an insolvency proceeding has been opened in relation to a particular entity.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency courts are courts of general civil jurisdiction (municipal courts) and the competency of the court is established based on the debtor's legal seat of operations in the case of legal entities or the residence of an individual (i.e., within the territorial jurisdiction of the relevant municipal court). The regulatory authority for insolvency proceedings is the FBiH Ministry of Justice.

Insolvency practitioners (known as bankruptcy trustees) must be registered on a list maintained by the FBiH Ministry of Justice and is published in the Official Gazette of the Federation. An insolvency trustee must have completed professional education and passed a specialised examination. The list of authorised insolvency practitioners is available **here**.

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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.

What is the nature and purpose of the reorganisation procedure?

There are two relevant procedures: a pre-insolvency financial restructuring procedure (postupak finansijskog i operativnog restrukturiranja) and a reorganisation procedure (reorganizacija dužnika) within general insolvency proceedings. **Click here** for a high-level overview of the FBiH business reorganisation framework.

Pre-insolvency financial restructuring procedure

The purpose of the pre-insolvency financial restructuring procedure is to allow a debtor which is threatened by insolvency and its creditors to conclude an agreement, under the supervision of the court, which will improve the liquidity and solvency of debtor through financial and operational restructuring and allow the debtor to continue performing its activity (Articles 2 and 3).

If the application to open pre-insolvency financial restructuring proceedings is unsuccessful, the court will issue a decision on opening general insolvency proceedings , unless the debtor has satisfied all its payment obligations to creditors (Article 103).

Reorganisation procedure

The purpose of the reorganisation procedure is to define the legal status of the debtor and its relations with its creditors, with particular emphasis on maintaining the debtor's business operations and work place (Article 2).

A reorganisation plan may include measures: to merge the debtor with one or more entities; to divide all or part of the assets of the debtor among the creditors; to determine the manner of settling insolvency creditors; to convert the obligations of the insolvency debtor into a loan; and to convert debt to equity, etc. (Article 207).

Who can commence the process and what entry conditions apply?

Pre-insolvency financial restructuring procedure

This procedure is available if the court determines the existence of threatening insolvency and the debtor is in payment default for no more than 60 days. Threatening insolvency will be established if the debtor will not be able to settle any payment obligations on maturity within 12 months (Article 5).

The right to file for the procedure before the competent court is available to the debtor and its creditors, subject to the consent of the debtor. The debtor should submit a proposal for financial restructuring, including a report on tits financial conditions and operations and a restructuring plan (Articles 2, 7, 32 and 33).

Reorganisation procedure

To access the reorganisation procedure, it is necessary first to initiate insolvency proceedings. Both the debtor and its creditors can petition for insolvency (Article 58) on the ground that the debtor cannot meet its accrued and outstanding payment obligations (inability to make payments). As a rule, the debtor is deemed to be unable to make the payments if it has failed to meet its outstanding payments obligations for a period of 60 days.

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**

Additionally, the debtor may request the opening of insolvency proceedings based on the threat of becoming unable to meet payment obligations (Article 6).

Within the insolvency procedure, the reorganisation procedure involves drafting a reorganisation plan. The debtor may file a reorganisation plan together with its petition to open insolvency proceedings.

After the opening of the insolvency procedure (but only until the final hearing), the reorganisation plan can be filed by the debtor (if it was unable to provide a plan when submitting the proposal for commencement of the insolvency proceedings and provided the debtor obtains the consent of the creditors' assembly) and/or by the insolvency practitioner (Article 208). The creditors' assembly also has the right to instruct the insolvency practitioner to prepare a reorganisation plan.

After the application to initiate the insolvency, a preliminary procedure commences in which the court has to assess if the grounds for opening an insolvency procedure are met (Article 58).

Is there any court involvement?

Pre-insolvency financial restructuring procedure

Yes, the proposal for commencement of this procedure, including a restructuring plan, must be presented to the court. Following verification of the admissibility of the proposal, the court issues a decision to open a pre-insolvency financial procedure and appoints an insolvency practitioner, also known as trustee (Articles 7 and 28). However, the court's role is more limited than in the reorganisation procedure since the debtor remains in possession throughout (Articles 30 and 80).

Reorganisation procedure

Yes, the entire insolvency procedure, including the reorganisation procedure, is fully court-supervised. The insolvency judge directs and controls the insolvency proceedings from the moment when the petition is filed until the closing of the proceedings (Article 80).

Is there any hybrid reorganisation procedure?

The pre-insolvency financial restructuring procedure is considered a hybrid procedure due to the more limited role of the court.

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

Pre-insolvency financial restructuring procedure

Yes, during the pre-insolvency financial restructuring procedure the debtor remains in control of its business until the confirmation or rejection of the restructuring plan. However, the debtor only has the discretion to make any necessary payments with the prior written approval of the insolvency practitioner or the court, which is issued within three days of the debtor's request. The debtor is not allowed to alienate or encumber its property (Article 52).

Reorganisation procedure

Yes, for the interim period prior to official opening of insolvency proceedings. Thereafter, the insolvency practitioner takes over the business operations and assets of the debtor, and the rights of the debtor to administer and dispose of assets, as well as the powers of its management body, are transferred to the insolvency practitioner (Article 110).

Is there a need to appoint an insolvency practitioner?

Pre-insolvency financial restructuring procedure

Yes, in this procedure the court appoints an insolvency practitioner, also known as a trustee, and supervises his work (Articles 28 and 29).

The insolvency practitioner ceases performance of his duties on either the day of the issuance of the decision on the confirmation of the financial restructuring agreement or, if the agreement fails, on the day of the opening of general insolvency proceedings (Article 29).

Reorganisation procedure

Yes, during the main insolvency proceedings and usually during the preliminary proceedings, although the law allows the judge some measure of discretion.

The judge may appoint an interim insolvency practitioner for the preliminary proceedings to determine whether there are grounds to open insolvency proceedings (Article 62).

After the opening of insolvency proceedings, the judge will appoint an insolvency practitioner (Article 73). Only natural persons who have appropriate professional qualifications and business experience may be appointed as insolvency practitioners. The insolvency practitioner is authorised and obliged to take possession of the property included in the insolvency estate, to manage it, to continue business operations until the reporting hearing, if possible and if this does not impair the creditors, and to liquidate the debtor's business in accordance with the decision of the creditors' assembly (Article 71). The work of the insolvency practitioner is supervised by the insolvency judge.

Is there any applicable stay or moratorium?

Pre-insolvency financial restructuring procedure

Yes, on the day of the opening of the pre-insolvency financial restructuring procedure, all pending court proceedings, administrative, litigation or enforcement are suspended and new actions against the debtor are not allowed, with the exception of any temporary measures against the debtor issued in criminal proceedings. However, 15 days after the examination hearing, any suspended litigation proceedings regarding the debtor can be resumed upon the request of a creditor (Article 53).

Reorganisation procedure

There is no moratorium during interim period prior to opening of insolvency proceedings.

Yes, if insolvency proceedings are opened, all pending court proceedings, including proceedings involving liens, are stayed if they relate to the insolvency estate (Article 117). However, secured creditors can request the satisfaction of their secured claims after the insolvency report hearing, which can be held only 15 days maximum after the hearing for examining the claims, under the general rules of enforcement proceedings with the prior consent of the insolvency practitioner in certain circumstances. These include where the relevant asset is sold in the process of reorganisation of the debtor or the sale of the insolvency debtor as a legal entity, including where the asset is sold as part of a group of assets. Furthermore, after the opening of insolvency proceedings, secured creditors may initiate execution proceedings and any stayed proceedings that such creditors initiated before the opening of insolvency proceeding will be resumed. Any stayed proceedings of execution and foreclosure that creditors initiated before the opening of insolvency proceedings will be resumed and conducted by the enforcement court in accordance with the rules for enforcement proceedings. However, the court may deny this where secured creditors will not be impaired (Article 117).

The law also recognises the concept of creditors with rights of separation. These are creditors which have a right to recover from assets that do not belong to the debtor and that will be separated from the insolvency estate. As these creditors are not the creditors of the debtor or the insolvency estate, they are not subject to the moratorium (Articles 31 and 58).

The moratorium stays in place for the duration of the proceedings.

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

There is no general protection for essential contracts or against termination of contracts on the grounds that the debtor has entered into insolvency proceedings including a pre-insolvency financial restructuring procedure or a reorganisation procedure.

However, during the preliminary proceedings prior to the formal opening of insolvency proceedings, parties who contracted with the debtor may not revoke continuing contractual obligations (Article 64). Additionally, if a bilateral agreement is not completely performed by the debtor and by the other party at the time of opening of the insolvency proceedings, the trustee may choose to perform the contractual obligations and demand performance from the other party (Article 124).

With respect to leasehold contracts, after the petition to open insolvency procedure, a third party may not terminate a lease or leasehold agreement that the debtor entered into as a tenant or lessee either due to a default in the payment of the rent for the lease or leasehold that occurred before the opening of the proceedings, or due to a deterioration in the financial condition of the debtor (Article 132).

Contractual provisions excluding or restricting in advance the application of Articles 124 to 135 of the law relating to performance of legally binding contracts are invalid (Article 136).

Is new financing protected by law?

Pre-insolvency financial restructuring procedure

No, there is no provision relating to the protection of any new financing provided for the continuation of the debtor's business during the procedure or as part of the restructuring plan.

Reorganisation procedure

Yes, the reorganisation plan may provide a lower priority for insolvency creditors and a higher priority for new creditors whose claims arise from loans issued during the supervision of the debtor (i.e. new loans after the proceeding is concluded and the plan is accepted) (Articles 254 and 256).

The insolvency practitioner is required to obtain the consent of the creditors' committee prior to entering into any legal acts that are of special importance to the insolvency proceedings, including new loans representing a significant burden for the debtor's estate (Article 172). Nevertheless, such legal acts will be legally valid against third parties without the consent of the creditors' committee.

New financing may be provided as part of the reorganisation plan but is not specifically regulated by the law.

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

Pre-insolvency financial restructuring procedure

No, all creditors vote as one class in the pre-insolvency financial restructuring procedure (Article 50).

However, the legislation recognises the following classes of creditors: creditors whose claims are reduced in accordance with their statement of reduction of claims; creditors whose claims are reduced in accordance with the law; creditors whose claims are disputed; and creditors whose claims are not affected by the pre-insolvency proceedings.

Creditors may have their claims reduced in accordance with the law if they do not agree to the proposed restructuring plan but the reduction is up to 10 per cent and their treatment should not be less favourable than the expected settlement if had there been no restructuring plan. Claims of dissenting creditors must be settled within two years from the day the decision approving the restructuring plan becomes final (Article 48).

Reorganisation procedure

Yes, the Insolvency Law specifies that creditors should be grouped in separate classes for the purposes of drafting and accepting the plan. Each class of creditors eligible to vote shall vote separately on the reorganisation plan. However, secured creditors may only vote as unsecured creditors (see below).

The following creditors should be treated in separate classes (Article 212): secured creditors if the plan affects their rights; creditors that are not of lower priority (e.g., unsecured creditors); each class of creditors of lower priority, if their claims are not discharged pursuant to Article 215 of the law; and employees if, in their capacity as creditors in the insolvency proceedings, they claim sums that are not negligible.

Creditors of lower priority are those with lower-ranking claims defined in Article 93, such as claims on payment of interest and claims related to the repayment of a loan from an equity holder.

The plan may provide for more classes. In this case, creditors of the same legal status may be classified according to the similarity of their economic interests. This classification should be based on valid reasons and the criteria for classification should be stated in the plan (Article 212).

Creditors who have registered their claims may have voting rights. Secured creditors may vote as unsecured creditors only if they have abandoned their collateral or if their claims have not been satisfied in full by the collateral. Creditors whose claims are not affected by the plan are not eligible to vote (Article 227). This is assessed on a case-by-case basis, depending on the circumstances and the scope of the reorganisation plan.

What are the majorities required to approve a reorganisation plan?

Pre-insolvency financial restructuring procedure

The restructuring plan will be deemed to be approved if at least 25 per cent of the total number of creditors voted for the plan and if there is a majority in value of creditors which voted in favour of the plan (Article 50).

The court will refuse to confirm the restructuring plan if: a creditor argues successfully that the restructuring plan puts it in a worse position than it would have been in without such plan; the implementation of the restructuring plan is unlikely to return the debtor to solvency by the end of the current and the next two years; or the restructuring plan does not determine the settlement of the amounts of the creditors with disputed claims and what they would have received if their claims had not been disputed (Article 50 (7)).

Reorganisation procedure

The reorganisation plan shall be deemed accepted if, in each class of creditors, a majority in number of the present creditors eligible to vote including those that are voting in written form and a majority in value of all creditor claims vote in favour of the plan (Article 234).

If the necessary majority in a class has not been achieved, a dissenting voting class is deemed to have accepted the reorganisation plan if: the creditors in the class are not worse off than without the plan; the creditors receive some economic benefits that are afforded to the parties in the plan; and the majority of voting classes have accepted the plan by the required majorities (Article 235).

The creditors of a particular class are deemed to have received some economic benefits if: according to the plan, none of the other creditors will receive a benefit that exceeds the full amount of their claims; no creditor receives a benefit who, if there was no plan, would have a lower priority than the dissenting class; no creditor that would have the same priority, if there was no plan, is placed in a better position than the creditors in the dissenting class.

After acceptance by voting, the plan needs to be confirmed by the court. Approval by the court may be withheld if, during the drafting of the plan, the provisions regulating the content and form of the plan or the acceptance by the creditors or the debtor have been substantially violated, unless these violations can be cured, or the plan was adopted in an illicit way or by illicit means, especially if the proposed plan places certain creditors in a more favourable position.

Additionally, the court shall refuse to confirm the reorganisation plan on the motion of a creditor if a creditor has opposed the plan during the hearing for voting at the latest, in written form or orally as noted in the minutes, and the plan places this creditor in a less favourable position than it would be without the plan (Article 241).

Any debtor's objection shall not be considered by the court if the acceptance of the plan does not place the debtor in a less favourable position than it would have been in if there were no plan, and if no creditor obtains economic benefits exceeding the full amount of its claim (Article 237).

Who does the reorganisation plan bind?

Pre-insolvency financial restructuring procedure

A restructuring plan confirmed by the court binds all creditors and the plan is effective against all creditors and third parties.

Reorganisation procedure

A reorganisation plan confirmed by the court binds all parties, including creditors who did not file claims and creditors who have objected the plan (Article 244).

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

Pre-insolvency financial restructuring procedure

Following the submission of the proposal by the debtor or creditor, the court will issue a decision on the opening of the procedure and appoint an insolvency practitioner, known as a trustee, within eight days after determining that the proposal is admissible (Article 39).

The creditors have 15 days to report their claims following the decision to open the procedure (Article 39). A hearing for examination of claims is scheduled by the court in order to examine the reported claims (Article 43). A second hearing regarding the voting of the financial restructuring plan should take place 30 days after the scheduling of such a hearing by the court (Article 49).

The pre-insolvency financial restructuring procedure must be completed within 150 days from the day of its opening. This deadline may be extended by the court for a maximum of 90 days (Article 31).

The moratorium arises on the date of commencement of the proceedings until the closing of such proceedings.

Reorganisation procedure

The court must consider an insolvency petition within eight days as of its filing and may grant eight additional days to present any missing information (Article 58). Once the court has determined that a valid petition has been submitted, preliminary proceedings begin, for the court to determine whether there are grounds to open insolvency proceedings (Article 61). The court shall schedule a hearing on the grounds for opening insolvency proceedings after receiving the report of the interim insolvency practitioner, who has 30 days to produce such report as from the date of his appointment (Article 63).

The court shall issue a decision to open insolvency proceedings or shall deny the petition to open proceedings, not later than three days after the completion of the insolvency hearing (Article 102). After the decision to accept the petition, there is a window of eight days to appeal (Article 109).

The decision accepting the petition to open the proceeding shall indicate, among other matters, the date of the first creditors' meeting, at which the claims are examined (examination hearing). This must occur eight days, at least, and 30 days, at most, from the filing of the claims. It must also indicate the deadline applicable to creditors to file their claims, which will be within 30 days (Article 105).

After the opening of insolvency proceedings, the right to file a reorganisation plan is granted to the insolvency practitioner and to the debtor. The court shall set a hearing at which the reorganisation plan and voting rights will be discussed, and the plan will be voted on within 30 days from the decision on the hearing (Article 225).

The decision confirming or rejecting the reorganisation plan must be announced at the hearing held for voting or at a special hearing that must be called within 15 days of the day the decision was made (Article 242). After the decision confirming the reorganisation plan is effective, it becomes binding on all parties (Article 244).

The moratorium lasts from the opening of insolvency proceedings until the close of such proceedings.

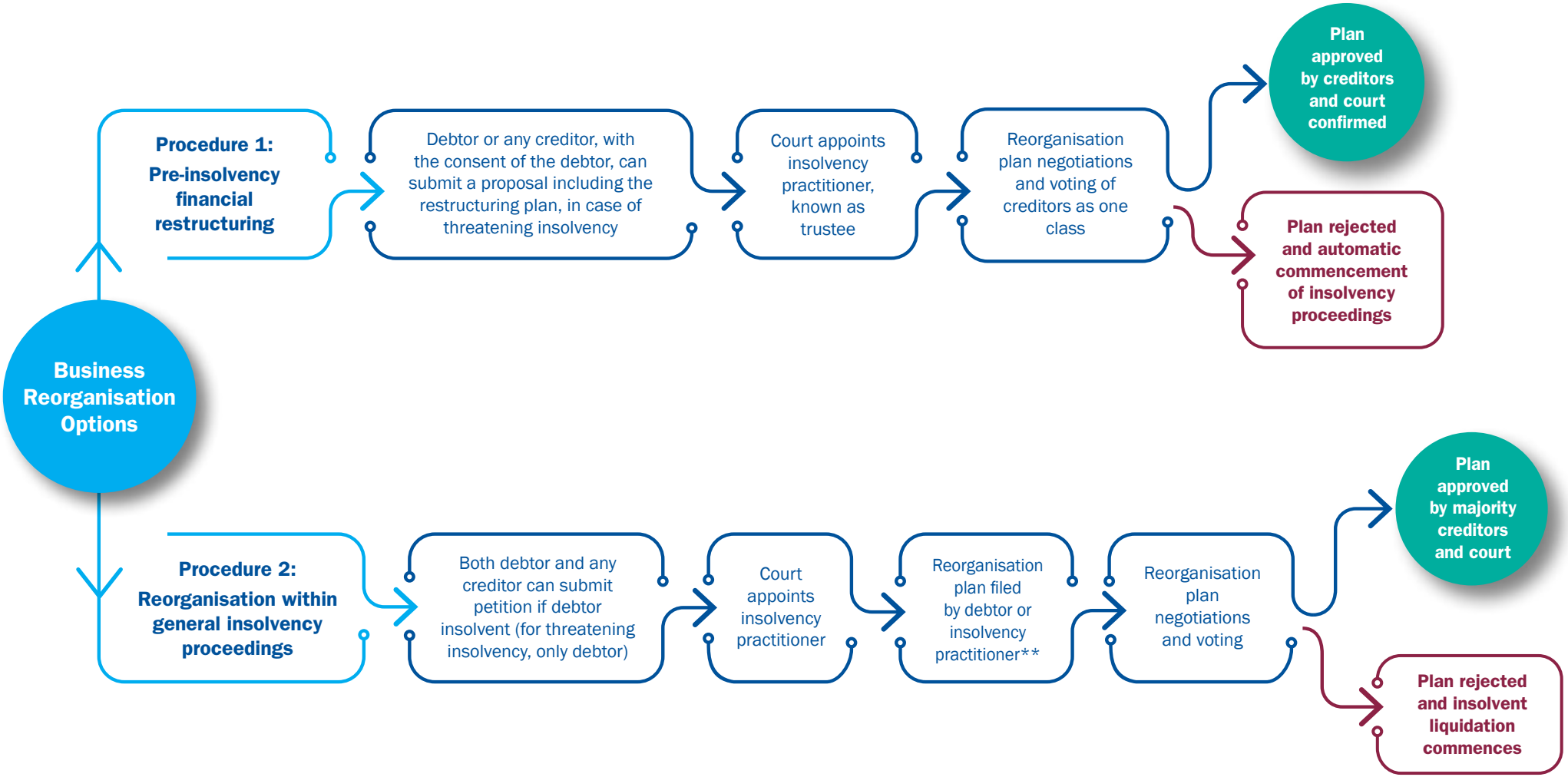
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, the UNCITRAL Model Law has not been adopted. However, the Insolvency Law includes provisions regarding international insolvency and more precisely about recognition of foreign court decisions issued prior or following a court decision of the Federation of Bosnia and Herzegovina and cooperation of insolvency practitioners.

Special features/observations

- In July 2021, a new Insolvency Law came into force containing a new pre-insolvency financial restructuring procedure, similar to the procedure available under the law of the Republika Srpska.
- Under a pre-insolvency restructuring plan a creditor which agrees to a reduction of debts and writes off certain claims against the debtor pursuant to the plan, shall not pay tax on the amount of the written-off claims (Article 50 (14)).

Overview of Bosnia and Herzegovina Federation Business Reorganisation Framework*



* 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 debtor may file its reorganisation plan with its petition to open insolvency proceedings or later if it is unable to do so.

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