Business Reorganisation Assessment

Bulgaria

European Bank
for Reconstruction and Development

Special thanks to:

CMS Sofia Lawyers Partnership

Dimitrov, Petrov & Co.

Slavcheva & Kacharova law firm

Part A

General Information

Macro Data

6.912	4.4%	US$ 11,320	Лв Bulgarian lev – BGN	10%	1.0%	4.8%
Population (million)[1]	GDP growth rate[1]	GDP per capita[1]	Currency	Corporate tax rate[2]	Inflation rate[1]	Unemployment rate[1]

Insolvency Legislation

Legal provisions governing the insolvency of (non-bank) legal entities and entrepreneurs (merchants) in Bulgaria are contained in Parts IV and V of the **Commercial Act** (the Insolvency Law) adopted 18 June 1991 (Official Gazette No. 48/1991) as amended on 8 December 2020 (Official Gazette No. 104).

Provisions on insolvency practitioners found in the Insolvency Law are supplemented by Regulation No. 3 dated 27 June 2005 (the Insolvency Practitioner Regulation) issued by the Minister of Justice, the Minister of Economy and the Minister of Finance. The **Registered Pledges Act** (RPA) published on 22 November 1996 (Official Gazette No. 110), as amended on 31 December 2019 (Official Gazette No. 102) and in force since 31 December 2019 regulates the priority in enforcement over pledged assets and selling pledged assets by the insolvency practitioner (trustee) within insolvency proceedings. Finally, employees receive certain protections in insolvency by virtue of the **Act for Guaranteed Receivables of Workers and Employees in the Case of Insolvency of the Employer**.

Bulgaria has not yet adopted changes to its legislation to transpose **Directive (EU) 2019/1023** (the Restructuring Directive) on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

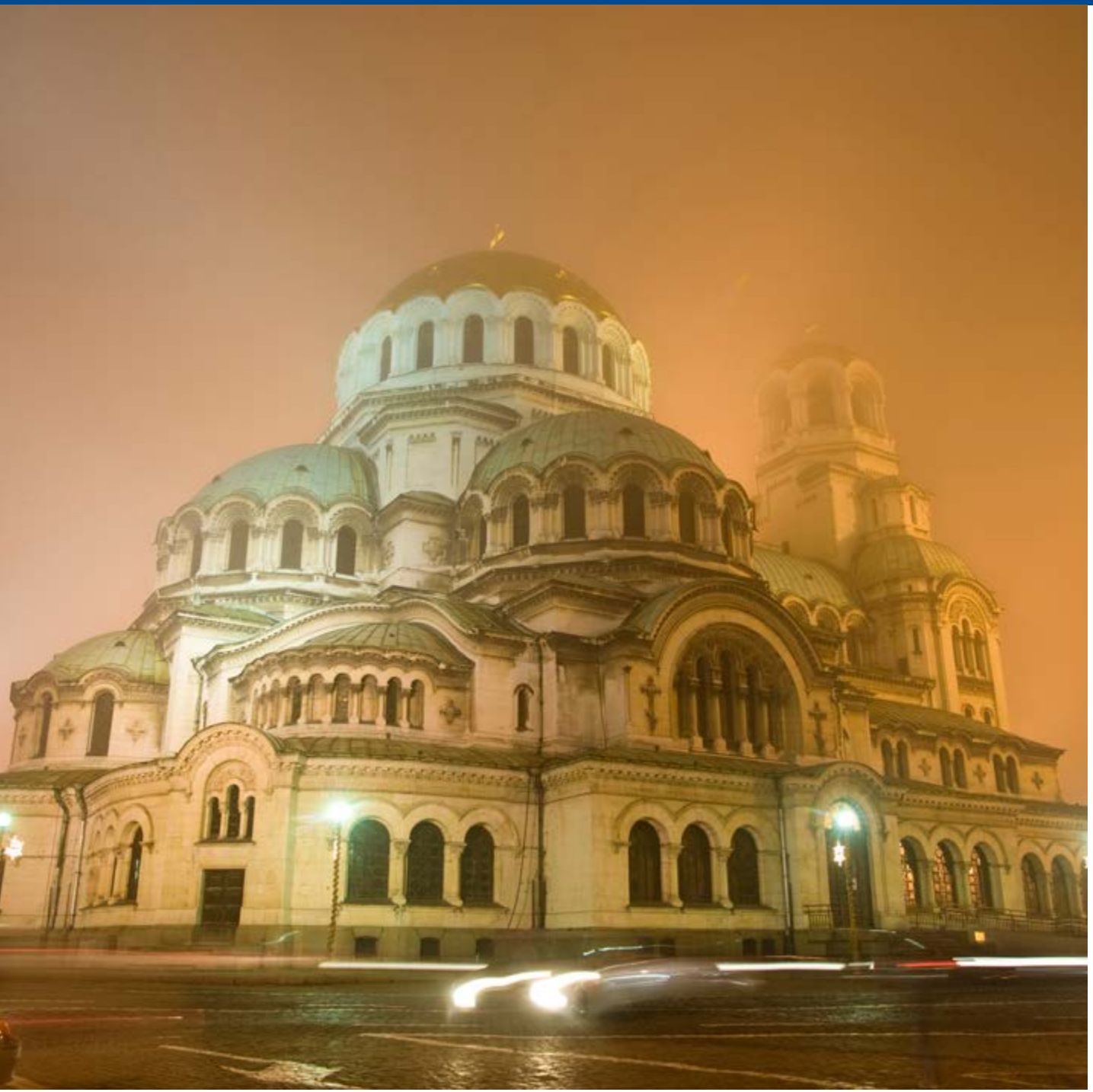
[1] **IMF – Source as of June 2021:** www.imf.org/en/Countries/BGR

[2] **PWC – Source as of August 2021:** www.taxsummaries.pwc.com/bulgaria/corporate/taxes-on-corporate-income

Insolvency Data

The statistics on the main insolvency proceedings (including rehabilitation and stabilisation) are published online in the annual report of the Supreme Court **here**. The annual report provides an overview of court proceedings initiated in Bulgaria, including insolvency proceedings. Further, the data is disaggregated in accordance with different insolvency and reorganisation procedures. The annual report also contains disaggregation of the data on the courts in which insolvency /reorganisation proceedings were commenced (but not the identity of the courts in which the stabilisation procedure was commenced).

Based on the annual reports of the Supreme Court, there were only two rehabilitation plans adopted in 2018 and 2019 compared with 1,130 insolvency proceedings initiated in 2019. In 2020 only one rehabilitation plan was concluded from 1,256 new insolvency cases. Regarding stabilisation proceedings, there were no filings in 2018. In 2019 there were three applications for stabilisation and two were terminated while one was pending as of end of 2019. During 2020 there were two new applications by debtors for a stabilisation procedure.



Company Information

The Bulgarian corporate law framework is mainly regulated by the **Commercial Act** adopted on 18 June 1991 (Official Gazette No. 48/1991) as amended on 8 December 2020 (Official Gazette No. 104). The Act governs the incorporation of legal entities, and rules relating to decision-making and capital composition of such entities, etc. The Bulgarian Chamber of Commerce and Industry maintains a Unified Trade Register of Bulgarian companies, associations, and representative offices of foreign entities. The link to the company registry can be accessed **here**.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency cases in Bulgaria are overseen by general district courts exercising jurisdiction in the place of the debtor's registered office at the time of submission of the petition to initiate proceedings. The Ministry of Justice is the main governmental regulatory authority for insolvency matters. The Ministry of Justice organises the examinations for insolvency practitioners (trustees), maintains the lists of insolvency practitioners and may initiate checks on insolvency practitioners in a particular insolvency proceeding of its own initiative or at the request of an interested party. Details as to admission criteria, qualification, and supervision of the activities of the persons appointed as insolvency practitioners are set out in the Insolvency Practitioner Regulation (see above).

Continue to Part B →

Part B

Business Reorganisation

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

There are no specific incentives to encourage a debtor and its creditors to conclude an extrajudicial voluntary agreement. However, parties are expressly permitted at any point during the insolvency proceedings to reach an out-of-court agreement (Article 740). Civil legislation applies in these cases unless otherwise provided for in the agreement or in the Commercial Act.

What is the nature and purpose of the reorganisation procedure?

There are two types of reorganisation procedures in Bulgaria which are regulated by the Insolvency Law: the stabilisation procedure (Производство по стабилизация на търговец) and the rehabilitation procedure (Оздравяване на предприятието). **Click here** for an overview of the Bulgarian business reorganisation framework.

Stabilisation procedure

This procedure is aimed at preventing the initiation of insolvency proceedings by enabling the debtor to reach an agreement with its creditors on the means of fulfilling the debtor's obligations and thereby supporting the continuation of the debtor's business (Article 761). It resembles a private debt settlement supervised by the court.

Rehabilitation procedure

This procedure can be accessed only within main insolvency proceedings, which are aimed at providing for the fair satisfaction of creditors through either liquidation of the debtor's business or reorganisation of the business by means of a rehabilitation procedure (Article 607).

Who can commence the process and what entry conditions apply?

Stabilisation procedure

This procedure may be initiated by a debtor which is not yet insolvent, but that faces an imminent threat of insolvency, subject to presentation of certain documentation, including a detailed plan for stabilisation of the business, containing time limits, terms, and conditions of payment to creditors, as well as the degree of satisfaction of creditor claims and any guarantee or security proposed (Article 770). Other conditions include: where the stabilisation plan envisages a partial waiver of claims against the debtor: the plan must envisage satisfaction of at least 50 per cent of each creditor's claims (lower in the case of related parties) and satisfaction for secured creditors in the amount equal to the market value of the secured assets; any payments to creditors may not be rescheduled for longer than three years after the date of termination of the procedure; and where the plan envisages sale of the entire business or part of it, an evaluation of the market value of the transaction must be attached to the application as well a draft contract signed by the buyer.

Rehabilitation procedure

The procedure may only be accessed by initiating main insolvency (bankruptcy) proceedings, which can be initiated by a petition in writing submitted to the court (Article 625). The petition can be submitted either by: the debtor; the liquidator (in the event of a voluntary liquidation); a creditor; national tax authorities (the State Receivables Collection Agency); or labour authorities (the Executive Agency Labour Inspectorate). The debtor must be either insolvent or over-indebted (Article 607a). Any debtor which is insolvent or (in respect of companies or partnerships) which is over-indebted must file for insolvency (bankruptcy) proceedings within 30 days (Article 626).

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**

A business is considered insolvent where it is unable to: meet payable monetary obligations related to a commercial transaction, including the validity, performance, non-performance, termination, invalidity or dissolution, as well as the consequences from termination; or meet a public obligation to the state or municipalities related to its commercial activity; or fulfil an obligation under the 'private state receivables' such as receivables of the state under contractual agreements; or fulfil an obligation to pay wages to at least one-third of its employees, which has not been discharged for more than two months (Article 608).

There is a legal presumption of insolvency if: the business has not applied for publication in the Commercial Register of its annual financial statements for the past three years or has ceased to make do payments; or the claim of the creditor which has filed for insolvency has remained outstanding for more than six months under enforcement proceedings.

A business can also be insolvent if it can pay only some of its debts and such difficulty is not temporary in nature. A company will be considered as over-indebted if its assets are insufficient to cover its monetary obligations. The definition of payment obligations is very broad. However, the most common test is whether the total value of the company's cash, cash equivalents and fast liquid assets is lower than the total value of the company's short-term liabilities (i.e., liabilities which are expected to mature within one year).

Within the insolvency proceedings, the rehabilitation plan can be submitted by the debtor, the insolvency practitioner, as well as by shareholders, creditors (holding at least one-third of the secured claims or holding at least one-third of the unsecured claims), and employees of the debtor above certain thresholds (Article 697).

Is there any court involvement?

Yes, the rehabilitation procedure and the stabilisation procedure are fully administrated and supervised by the court.

Are there any hybrid reorganisation procedures?

No, there are no hybrid reorganisation procedures.

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

Stabilisation procedure

Generally, yes, subject to the court's ability to deprive the debtor of its management powers. The court may allow the debtor to continue its activities under the supervision of an insolvency practitioner (trustee). However, if the court finds that the debtor's actions may jeopardise the creditors' interests, the court may restrict or prohibit the debtor from managing its property and grant that right to the insolvency practitioner (Article 776).

Rehabilitation procedure

Generally, yes, subject to the court's ability to deprive the debtor of its management powers. On commencement of insolvency (bankruptcy) proceedings, the debtor continues its activities under the supervision of an insolvency practitioner (trustee) (Article 635). The debtor may conclude new transactions only with the prior consent of the insolvency practitioner. However, the court may deprive the debtor of the right to manage and dispose of its property and delegate this right to the insolvency practitioner.

Is there a need to appoint an insolvency practitioner?

Stabilisation procedure

Yes, on the initiation of the procedure, the court appoints an insolvency practitioner (trustee) to supervise the debtor's activities in accordance with the restrictions imposed by the court under Article 776, which prohibit among other matters the payment by the debtor of its debts. The court may also appoint an inspector who must be a registered auditor (Article 784).

An inspector is always appointed where the plan envisages any change in the debtor's business structure or a debt-for-equity swap.

Rehabilitation procedure

Yes, an insolvency practitioner (trustee), is appointed by the court either on opening of insolvency proceedings or earlier if required for conservation of the debtor's property. The court shall replace the temporary trustee by a permanent trustee appointed by the first creditors' meeting provided he complies with the qualification requirements set out in the legislation and has consented to his appointment (Article 656).

Following court approval of the rehabilitation plan, the court appoints a supervisory body, in cases where this is not envisaged in the plan, to oversee implementation of the plan (Article 707). The supervisory body may be a single member or a body consisting of three to seven people. The quorum and method of the decision-making of this body are regulated in the rehabilitation plan. The debtor must provide the supervisory body with a report on its activities and on the steps taken to implement the rehabilitation plan.

Is there any applicable stay or moratorium?

Stabilisation procedure

Yes. After opening of the procedure, the initiation of execution proceedings against the debtor and any execution under the Registered Pledges Act against the debtor's property are inadmissible and any ongoing proceedings of this kind are suspended (Article 780).

Rehabilitation procedure

Yes. Commencement of insolvency (bankruptcy) proceedings automatically stays any court and arbitration proceedings under civil and commercial law cases against the debtor, with the exception of labour disputes (Article 637). Furthermore, any enforcement proceedings against the property included in the insolvency estate are stayed, except for the properties under Article 193 of the Tax and Social Insurance Procedure Code. Secured creditors may continue any ongoing enforcement action where there would otherwise be a danger of harming the secured creditors' interests (Article 638).

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

No, the law does not provide for protection against third-party termination of contracts due to the debtor entering into a reorganisation procedure. There are no provisions protecting contracts that are essential for continuation of the debtor's activities.

Is new financing protected by law?

No, there is no specific protection for new financing.

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

Stabilisation procedure

Yes, all creditors participate in the procedure and creditors are divided in the following classes (as applicable) for voting purposes: secured creditors; creditors with receivables arising from employment; creditors with public receivables; unsecured creditors; and other creditors that are related to the debtor, regardless of the classes above (including shareholders and partners) (Article 789). Related creditors are not entitled to vote.

Rehabilitation procedure

Yes, when adopting a rehabilitation plan, creditors vote on the proposed plan in different classes which can be identified as: secured creditors; unsecured creditors; the state; employees who have a claim based on employment relationships which have arisen before the date of the judgement on the initiation of the insolvency (bankruptcy) proceedings; and other unsecured creditors that are subordinated to the satisfaction of other claims (Article 703).

What are the majorities required to approve a reorganisation plan?

Stabilisation procedure

In the procedure, the plan is adopted by each class by creditors representing a majority of half of the receivables in the class, and for the plan to be adopted for this class, at least two-thirds of the creditors in the class must have voted. However the plan may be approved without the need for each class to approve it if creditors representing more than three-quarters of the receivables have voted for it. The votes of related parties are not considered (Article 789).

Rehabilitation procedure

The plan must be accepted by each class by a simple majority of the value of the claims of such class (Article 703 (4)). A plan cannot be adopted if more than half of the claims allowed, regardless of the classes in which they are distributed, have voted against it (Article 703 (6)).

The court will endorse the plan if the plan ensures that non-consenting creditors and a non-consenting debtor receive the same payments which they would have received on distribution of the property under the terms and procedures provided for by the law. Furthermore, shareholders and partners cannot receive any payment under the plan until all obligations have been met to the classes of creditors affected by the plan.

Who does the reorganisation plan bind?

Stabilisation procedure

The stabilisation plan is binding on the debtor and all creditors (secured and unsecured), whose receivables have come into existence prior to the date of the decision for the approval of the plan, including those which did not participate in the procedure or which voted against the plan (Article 791). However, the plan does not affect the rights of secured creditors with respect to their secured assets and it does not have effect on a creditor which was not included in the list of the creditors or which was deprived of the opportunity to vote on adoption of the plan.

Regarding any public debt, the prior consent for the plan by the Minister of Finance under Article 189, para. 1 of the Tax-Insurance Procedure Code and under Article 3, para. 11 of the National Revenue Agency Act is needed.

Rehabilitation procedure

The plan is binding on the debtor and all creditors (secured and unsecured) whose claims arose before the date of the judgment initiating the insolvency proceedings (Article 706). Those persons who were not part of the plan are not bound.

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

Stabilisation procedure

The application for the procedure is reviewed by the court immediately in a closed hearing (Article 771). Where the court finds that reasons for opening of the stabilisation procedure exist, the court opens the procedure and determines the date of the hearing for review and adoption of the stabilisation plan proposed by the debtor. The hearing must take place no later than three months after the opening of the procedure (Article 772).

The procedure must be terminated if within four months after the opening of the procedure no stabilisation plan is affirmed by the court.

The moratorium commences on opening of the procedure and terminates if a stabilisation plan is not affirmed. Where the plan is affirmed, the moratorium is substituted by the effect of the ruling affirming the plan, i.e. a contractual moratorium replaces the Insolvency Law moratorium (Article 780).

Rehabilitation procedure

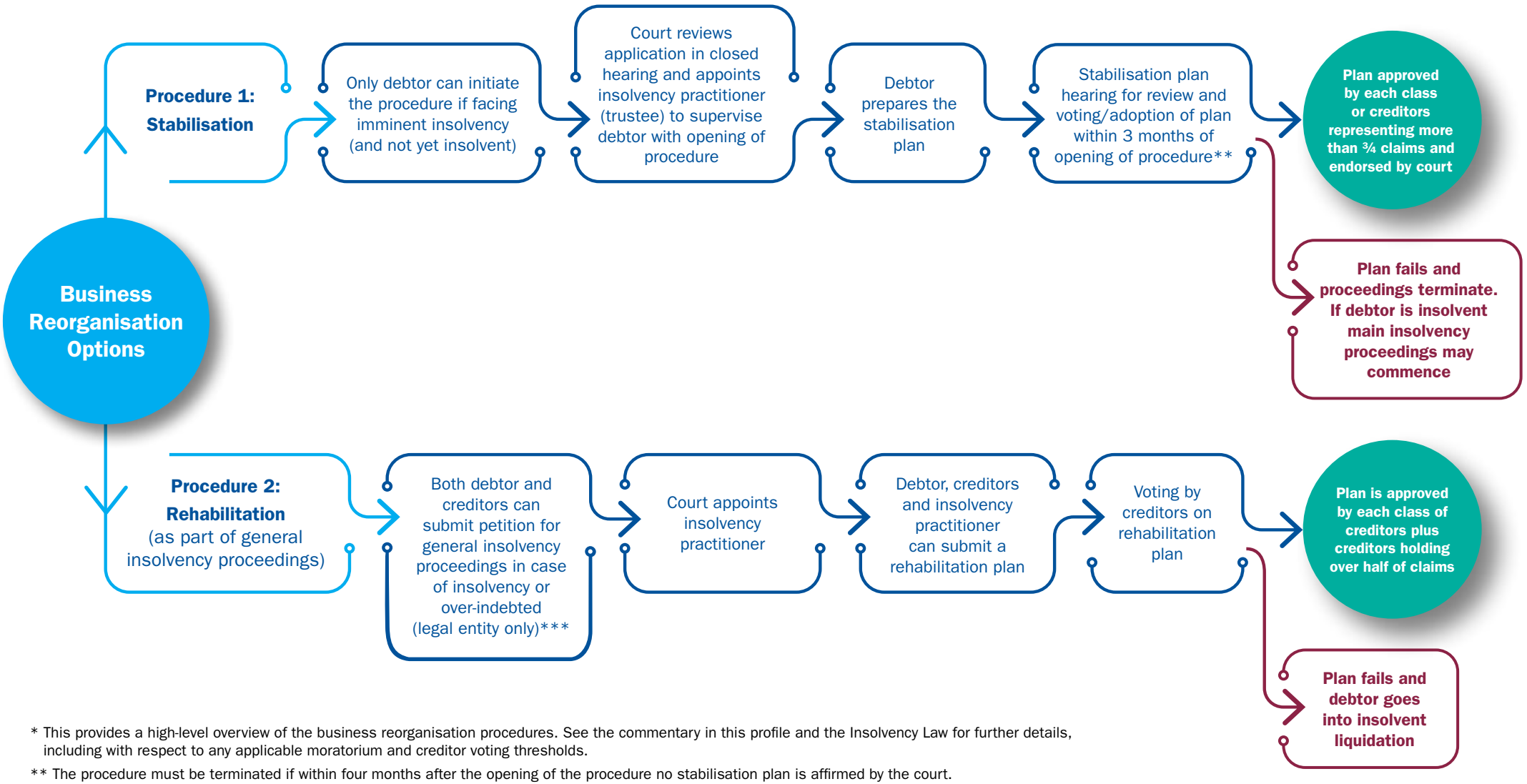
There is no specific timeframe for the rehabilitation procedure. However, a rehabilitation plan may be proposed not later than one month following the date of publication in the Commercial Register of the court ruling approving the list of claims allowed under Article 692.

There is no specified duration for the moratorium, which begins automatically on opening of main insolvency proceedings and continues until their termination.

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

No, Bulgaria has not adopted the UNCITRAL Model Law. However, as a member of the European Union (EU) Bulgaria is subject to **Regulation (EU) 2015/848** on insolvency proceedings, which governs the coordination of insolvency proceedings within the EU.

Overview of Bulgarian 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.

** The procedure must be terminated if within four months after the opening of the procedure no stabilisation plan is affirmed by the court.

*** The petition can also be submitted by the liquidator (in the event of a voluntary liquidation); national tax authorities (the State Receivables Collection Agency); or labour authorities (the Executive Agency Labour Inspectorate).

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