

Business Reorganisation Assessment

📍 Georgia



European Bank
for Reconstruction and Development



Special thanks to:

Begiasvili & Co. Limited

Strategic Law Agency - CAISSA LAW

VBAT Law Firm

Part A

General Information

Macro Data

3.704

Population (million)¹

3.5%

GDP growth rate¹

US\$ 4,360

GDP per capita¹


Georgian Lari GEL

Currency

15%

Corporate tax rate²

3.8%

Inflation rate¹

21.9%

Unemployment rate¹

Insolvency Legislation

The primary legislative text governing insolvency and restructuring proceedings of legal entities in Georgia is the **Law on Rehabilitation and the Collective Satisfaction of Creditors' Claims** (the Insolvency Law) adopted on 18 September 2020, which came into force in April 2021.⁴ Secondary legislation on insolvency practitioners published on 31 March 2021 is available [here](#).

¹ **IMG – Source as of June 2021:** www.imf.org/en/Countries/GEO

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 **Geostat – Source as of June 2021:** www.geostat.ge/en/modules/categories/683/employment-unemployment

⁴ An official English translation of the Insolvency Law is available [here](#). The Assessment Questionnaire and economy results for Georgia are based on the previous legislation in force in 2020.

Insolvency Data

Courts are required to publish the first court order on opening any proceedings. All first orders are published at: www.ecourt.ge. However, data on insolvency proceedings is not aggregated. From 1 January 2020 until 21 June 2021, 107 insolvency proceedings were registered, but the system does not filter proceedings according to whether these are reorganisation or insolvent liquidation-type proceedings. The only way to obtain this data would be to download all files and check each of the court decisions.

Once the court decides to initiate insolvency proceedings with respect to a company, this decision shall be sent to National Bureau of Enforcement and Public Registry. In addition, the information shall be published in the Legislative Herald, an official publication available at: www.matsne.gov.ge. All further information and documents shall be published on the court's electronic system at www.ecourt.ge and in specific cases also in the Legislative Herald.

The new Insolvency Law sets out provisions in respect of an electronic case management system for official information and documentation produced as part of insolvency proceedings. According to the law, the electronic case management system should have been ready before 1 April 2021 but as of July 2021 this system was still under development.





Company Information

The company law framework is governed by the Civil Code and the Law on Entrepreneurs. Information about companies is available in the Registry of Commercial and Non-Commercial Entities held and administered by the National Agency of Public Registry, under the Ministry of Justice. The register is available online free of charge [here](#).

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency cases are required to be heard by either Tbilisi City Court (responsible for Eastern Georgia) or Kutaisi City Court (responsible for Western Georgia) and the competency of the court is established based on the debtor's legal seat of operations. There are no provisions yet for the insolvency of natural persons. The regulatory authority for insolvency proceedings is the Ministry of Justice. Insolvency practitioners (known as rehabilitation managers, bankruptcy managers or supervisors depending on the context) are regulated by the **National Bureau of Enforcement** which has been established under the direction of the Ministry of Justice as the supervising authority. The Minister of Justice is responsible for the rules and conditions for authorising insolvency practitioners, as well as the rules for maintaining the Unified Register of Insolvency Practitioners.⁵ Insolvency practitioners can be legal persons as well as natural persons and are selected by means of a randomised electronic system.

⁵ Ministry of Justice of Georgia, National Bureau of Enforcement, available at: www.nbe.gov.ge/index.php?lang_id=ENG&sec_id=32&info_id=8578

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 there is the possibility of concluding a regulated agreement (see below) which is conducted almost entirely out of court under the supervision of an insolvency practitioner and is only subject to court review where the approval of the agreement by the creditors' meeting is appealed by a creditor (Article 39).

What is the nature and purpose of the reorganisation procedure?

The Insolvency Law expressly prioritises reorganisation of the debtor over liquidation and stipulates that liquidation should be an option only if reorganisation cannot be achieved. The two reorganisation options available to debtors are the regulated agreement procedure (რეგულირებული შეთანხმება) and the rehabilitation procedure (რეაბილიტაციის რეჟიმი).

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

Regulated agreement procedure

The purpose of the agreement is to maintain the operations of the debtor and to reach an agreement on which creditors of the debtor receive at a minimum the amount they would have received in an insolvent liquidation (Article 21). A regulated agreement constitutes a simplified means of the debtor reaching a solution with creditors without the need to fulfil certain steps in the general insolvency procedure, such as determining creditors' claims, or creating a registry of creditors. The agreement is reached out-of-court at a creditors' meeting and the insolvency practitioner submits to the court a report of the decision and outcome of the creditors' meeting (Article 35(8)).



Rehabilitation procedure

The purpose of this procedure is the approval of a rehabilitation plan. The rehabilitation plan may provide for the survival of a debtor as an operating entity by a restructuring of the debtor's liabilities that results in full or partial satisfaction of creditors' claims and achievement of a better result as a whole than would have been possible in the case of immediate insolvent liquidation of the debtor (Article 69). The Insolvency Law allows the debtor to convert insolvent liquidation (known as bankruptcy) proceedings into rehabilitation proceedings.

Who can commence the process and what entry conditions apply?

Regulated agreement procedure

The procedure may be commenced by an insolvent debtor, or a debtor facing expected insolvency, as defined below (Article 21). Only the debtor can propose a regulated agreement to its creditors (Article 22). The debtor must send a notice of its intention to submit a proposal to the insolvency practitioner in the form prescribed by the legislation (Articles 23 and 27). To commence the procedure, the court needs to approve that the proposal meets all relevant formalities and to receive a positive report from the insolvency practitioner (Article 31(4)).

Rehabilitation procedure

To access this procedure, a party needs to apply for the commencement of general insolvency proceedings. The grounds for initiating insolvency proceedings shall be the insolvency or expected insolvency of a debtor (Article 6). A debtor is insolvent if it is unable to cover its liabilities that have become due and payable. Expected insolvency exists if there are reasonable grounds to presume that a debtor will become insolvent. The right to file for the opening of a rehabilitation procedure in insolvency proceedings is available to the debtor, creditors, the supervisor of a regulated agreement and the rehabilitation manager (in the case of a conversion from insolvent liquidation). The application should also include a substantiation that there is a reasonable probability of achieving the objective of rehabilitation (Article 44). The court rules on the commencement of the rehabilitation procedure jointly with the acceptance of the application for insolvency (Article 62).

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?

Regulated agreement procedure

This procedure minimises court involvement. The court decides on whether a debtor may propose a regulated agreement to its creditors and thereafter this process is overseen by an insolvency practitioner. The court is only involved in reviewing the regulated agreement where a creditor appeals against the approval of such agreement by the creditors' meeting (Article 39).

Rehabilitation procedure

Yes, this procedure is entirely court supervised.

Are there any hybrid procedures?

Yes, the regulated agreement procedure, as described in Chapter II of the Insolvency Law, is a hybrid procedure. While supervised by an insolvency practitioner, it is mostly conducted out of court.

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

Regulated agreement procedure

Yes, the debtor remains in possession and can continue to carry on its business undertaking under the supervision of an insolvency practitioner (Article 21).

Rehabilitation procedure

Not necessarily. The applicant may request leave of the court for the debtor to remain in possession under the supervision of an insolvency practitioner (known as a supervisor) or to appoint an insolvency practitioner (known as a rehabilitation manager) to manage the debtor's business (Article 44(1)(i)). The court must reach a decision according to the procedure and requirements set out in Article 64. Where the debtor submits an application for opening of rehabilitation proceedings and requests to continue managing the business, the court shall leave the debtor's management in place if the court considers it reasonable and

substantiated. If a supervisor is appointed by the court, the debtor's management powers are limited. If a rehabilitation manager is appointed by the court, the debtor's management powers are suspended (Article 72).

Is there a need to appoint an insolvency practitioner?

Regulated agreement procedure

This cannot be conducted without the appointment of a supervisor (Article 21(3)).

Rehabilitation procedure

Yes. The participation of an insolvency practitioner is mandatory for all insolvency proceedings (Article 11). However the type of insolvency practitioner appointed may vary, i.e. the practitioner may be either a supervisor where the debtor remains in possession or a manager where the debtor's management is displaced (see above).

Is there any applicable stay or moratorium?

Regulated agreement procedure

A moratorium of two months is available to the debtor to negotiate the conclusion of an agreement. The scope of the moratorium is identical to the scope set out for general insolvency proceedings, including the rehabilitation procedure. By a decision of the creditors' meeting, the two-month period may be extended for not more than two months (Article 21(4)). The debtor can, however, also conclude the agreement without requesting a moratorium from the court.

Rehabilitation procedure

Once the insolvency application is accepted and the rehabilitation procedure is commenced, a wide-ranging moratorium is automatically in place (Article 55). It applies to secured as well as unsecured creditors. However, secured

creditors can request the court to lift the moratorium on enforcement of secured property on certain grounds set out in the Insolvency Act, including if the enforcement is in respect of a perishable thing or necessary for rehabilitation.

Is there any protection for essential contracts and from ipso facto provisions?

Yes, with respect to business reorganisation procedures for the rehabilitation procedure only. A court may deliver a ruling on applying additional moratorium measures on the basis of a well-founded application of a creditor, a debtor, a manager or other interested persons. This may include a prohibition on contractors of the debtor terminating, suspending and/or impeding the provision of critical services to the debtor due to the commencement of insolvency proceedings, if the debtor discharges its liabilities that have arisen after the application for insolvency was declared admissible (Article 57(1)(c)).





Is new financing protected by law?

There is no express provision in the Insolvency Law to protect new financing needed to continue the debtor's operations or as part of the plan for either the regulated agreement procedure or the rehabilitation procedure. However, new claims after the opening of rehabilitation proceedings have priority in payment before unsecured and preferred claims (Article 80).

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

Regulated agreement procedure

No, creditors are grouped together in one class for voting purposes, including secured, unsecured and preferred creditors. However, note that secured and preferential creditors have certain veto rights (see below).

Rehabilitation procedure

Yes, the Insolvency Law recognises secured creditors and unsecured creditors as separate classes of creditors (Article 82(8)).

The law states that unsecured creditors have voting rights. Secured creditors, however, can only have voting rights if the rehabilitation plan provides for amendments to the terms and conditions of the agreement between the creditor and the debtor (Article 82(6)).

What are the majorities required to approve a reorganisation plan?

Regulated agreement procedure

Approval requires the support of creditors representing at least 75 per cent of attending creditors with voting rights, who are not persons related to a debtor (as defined under Article 3, including certain shareholders, related companies and relatives). The voting threshold is defined on the basis of the value of claims of creditors. A secured creditor shall not have a voting right, unless the regulated agreement provides for a change of the terms and conditions of the agreement concluded between the debtor and the secured creditor. Furthermore, the regulated agreement cannot affect the rights of a secured creditor to enforce its security without that creditor's express consent and cannot

propose to satisfy unsecured creditors before preferred creditors unless such preferred creditors agree (Article 39).

Rehabilitation procedure

A simple majority of votes of unsecured creditors and a simple majority of votes of secured creditors with voting rights are needed to approve a reorganisation plan (Article 82). The votes of creditors who are persons related to a debtor (see above) shall not be taken into account. Where the Revenue Service is creditor, its consent shall be deemed to have been granted if the rehabilitation plan provides for the payment of the principal amount of tax claims in full within five years from the entry into force of the rehabilitation plan (Article 82(11)).

Nonetheless the rehabilitation plan can also be confirmed by the court if it is not supported by creditors in accordance with Article 82 provided that: the insolvency practitioner applies for special confirmation; a group of unsecured or secured creditors has supported the proposed plan by a majority established by the law; and the court considers that the rehabilitation plan will be implemented and the rights of creditors are protected.

Who does the reorganisation plan bind?

Regulated agreement procedure

A regulated agreement approved by a creditors' meeting in accordance with Article 35 and by the court is binding on all creditors included in the agreement, except for creditors who were not invited to the meeting because the insolvency practitioner was not aware of the existence of such creditors (Article 36). It is also subject to certain veto rights for secured and preferred creditors (see above).

Rehabilitation procedure

On entering into force, the plan is binding on all parties provided for by the rehabilitation plan, and persons or entities to whom this plan applies, creditors whose claims have not been accepted in accordance with the law and creditors who voted against the rehabilitation plan.

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

Regulated agreement

The ordinary timeframe and deadline for publication of a draft regulated agreement in order to call a creditors' meeting is two months without a moratorium (Article 34(1)) or four months where the debtor benefits from a moratorium.

A moratorium is not automatic but is available only at the request of the debtor. The moratorium, which is initially for two months, may only be extended for a total maximum period of four months overall (Article 21(4)).

Rehabilitation procedure

The deadline for creditors endorsing a draft rehabilitation plan proposed by an insolvency practitioner is six months after the court ruling declaring an application for insolvency admissible and opening a rehabilitation regime has been delivered. This deadline is extendable once only by not more than three months by a decision of a creditors' meeting (Article 13(7)).

After the plan is endorsed, the court will approve the plan (Article 83) and a rehabilitation plan shall enter into force upon its approval by a court, unless the rehabilitation plan envisages a different date of entry into force, which shall be not later than one month after the court approves the rehabilitation plan (Article 85).

The moratorium shall end at the same time as the procedure ends, upon a court ruling approving a rehabilitation plan. A person authorised to manage a debtor shall publish a report on the implementation of the rehabilitation plan once every six months after the end of the rehabilitation regime (Article 94).

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

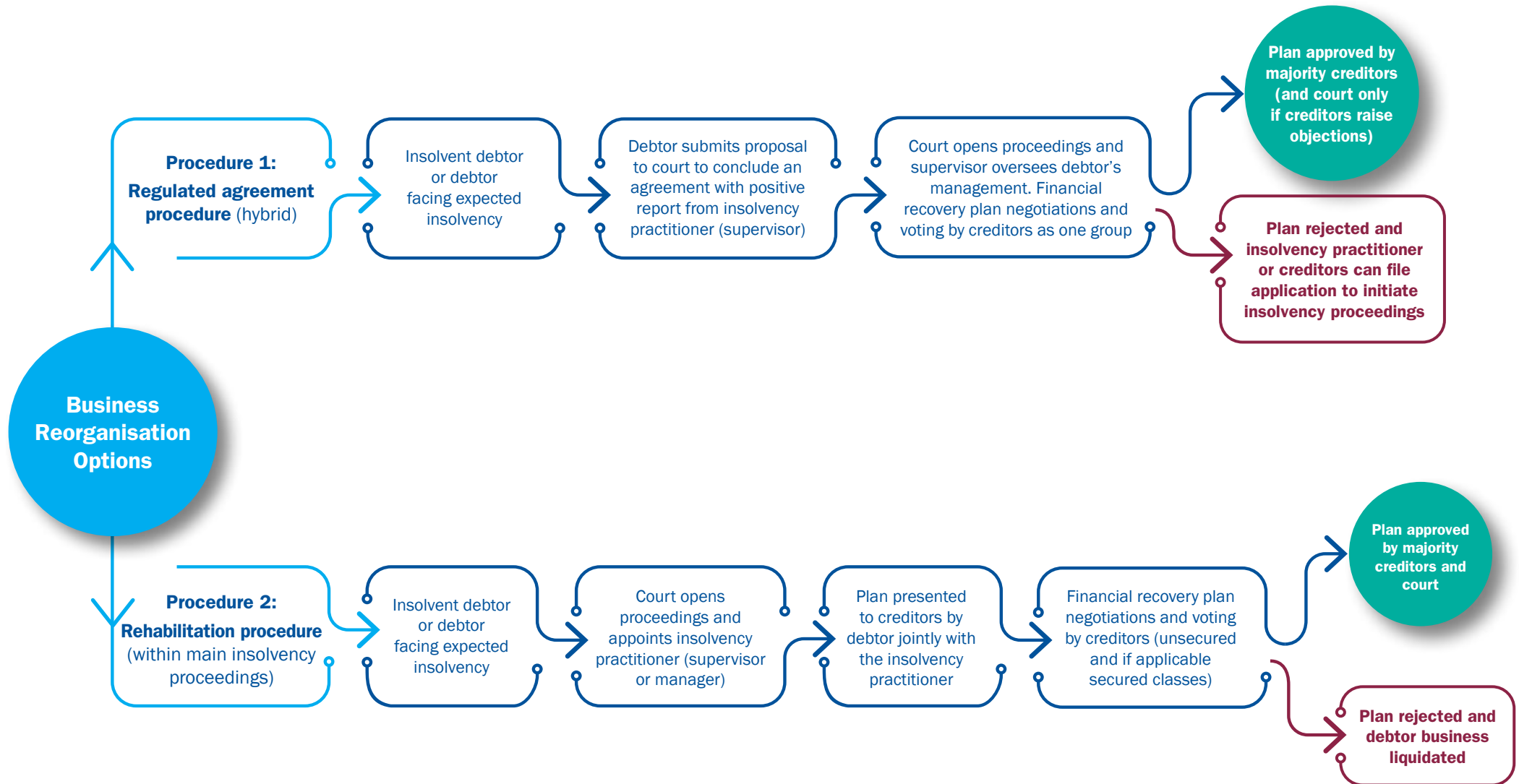
No. However Chapter XII of the Insolvency Law sets out limited provisions on international insolvency. These include a provision on recognition of foreign court decisions relating to immovable property and/or creditors located in Georgia in accordance with the Law of Georgia on Private International Law, unless explicitly contrary to the fundamental goals and principles established for insolvency proceedings by Georgian legislation.

Special features/observations:

- The new Insolvency Law introduced in April 2021 changes the focus of the previous framework from liquidation to reorganisation.
- Georgia is one of a few economies where we invest that has a hybrid insolvency procedure and a cross-class cram down mechanism (in the rehabilitation procedure).
- From 2021, insolvency practitioners are regulated by a dedicated unit established under the National Enforcement Bureau.



Overview of Georgian Business Reorganisation Procedures*



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

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