Business Reorganisation Assessment

Hungary

European Bank
for Reconstruction and Development

Special thanks to:

CMS Hungary

DLA Piper Hungary

Part A

General Information

Macro Data

9,770	4.3%	US$ 18,080	Ft Hungarian forint – HUF	9%	3.6%	3.8%
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 insolvency and reorganisation proceedings in Hungary is the **Insolvency Act** XLIX of 1991 (the Insolvency Law) (as amended). Furthermore, Hungary has recently adopted the Restructuring Act LXIV of 2021 (the Restructuring Act) that transposes **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.

Other insolvency legislation includes: Government Decree 358/2011 (XII. 30.) on the appointment of a state liquidator to participate in the bankruptcy and liquidation proceedings of strategically important business organisations; Decree 29/2016 (VII. 28.) of the Minister for National Development on the rules for the compulsory professional development of persons qualified in liquidation and administration; Government Decree 357/2011 (XII. 30.) on the procedural rules related to the registration of the data of the state liquidator participating in the bankruptcy and liquidation proceedings of strategically important business organisations and their administrative control; Government Decree 17/2014 (II. 3.) on the electronic sale of the debtor's assets in liquidation proceedings and Government Decree 225/2000 (XII. 19.) on the accounting tasks of liquidation.

The main legislation applicable to insolvency practitioners is Government Decree 114/2006 (V. 12.) on the register of liquidators; and Ministerial Decree (IRM) 36/2010 (V. 13.) on the rules relating to the designation of temporary administrators, liquidators and administrators using a random electronic selection process. There is also a **Recommendation 6/2017 (V. 30.)** (the Restructuring Recommendation) of the Magyar Nemzeti Bank (the Hungarian Central Bank) on the negotiated restructuring process of claims against co-financed corporate borrowers.

Recently the Hungarian legislator introduced a new set of reorganisation type proceedings called "reorganisation of enterprises" detailed in Governmental Decree 179/2021 (IV. 16.), Governmental Decree 345/2021 (VI. 18.) and Act XCIX of 2021 (the Emergency Legislation). The new legislation is temporary in nature and in response to the Covid-19 pandemic. It appears to be limited in time and is scheduled to expire end of 2022. This profile does not analyse the Emergency Legislation.

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

[2] PWC – Source as of July 2021: **www.taxsummaries.pwc.com/quick-charts/corporate-income-tax-cit-rates**

[3] **Magyar Közlöny (magyarkozlony.hu)** – Official Gazette 2021 No. 102

Insolvency Data

The Office of National Statistics displays aggregated data on insolvency proceedings and new and dissolved companies, including the number of insolvent liquidation and reorganisation type proceedings from 2008 to 2019. The data is available in Hungarian **here**.

More recent data can be found in the official statistical yearbook of the Hungarian courts, where in the specific Excel files 'received cases' there is data for every year from 2009 to 2020 available **here**.

Year	Total number of insolvency proceedings	Of which liquidation proceedings	Of which reorganisation proceedings
2018	12,928	12,864	64
2019	11,812	11,689	123
2020	10,932	10,869	63

Information about whether a company is subject to an insolvency procedure (records without decisions) is available on the Companies Register at **www.e-cegjegyzek.hu**. Such change in status is published once the court decision on the commencement of the procedure becomes final and binding.

This information is also available on the online version of the Companies Gazette of the Ministry of Justice of Hungary at **www.cegkozlony.hu**.

Company Information

The Hungarian company law framework is governed by Act V of 2013 on the Civil Code and Act V of 2006 on public company information, company registration and winding-up proceedings. Information about companies is contained in the Companies Register kept by the company data service of the Ministry of Justice of Hungary. The register is available online free of charge **www.e-cegjegyzek.hu/here**.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency proceedings are non-contentious proceedings falling within the competence and exclusive jurisdiction of regional courts. As a general rule, the jurisdiction of the court is determined on the basis of the registered seat of the debtors at the date of submission of the petition for the commencement of insolvency proceedings.

Non-contentious proceedings related to restructuring under the new Restructuring Law fall within the competence and exclusive jurisdiction of the Budapest-Capital Regional Court (Fővárosi Törvényszék) for the whole of Hungary.

Authorities involved in insolvency proceedings are the Ministry of Justice and relevant tax authorities that run an extraordinary audit for companies under liquidation. The authority in charge of the list of insolvency practitioner companies is a unit of the Government Office of the Prime Minister.

Insolvency practitioners in Hungary are legal persons which fit a certain profile, namely having at least one economist, one licensed auditor, one qualified lawyer and at least two professionals with liquidation and asset controller qualifications (Section 2 (5) of Government Decree 114/2006 (V. 12.)). They participate in a tender organised by the government every seven years to obtain an authorisation to act. Authorised insolvency practitioner companies are listed on the website of the Government at **www.kormany.hu**. The Restructuring Directive introduced a new role of 'restructuring expert'. The expert may be selected either from the registry of insolvency practitioners or – in the case of debtors in which the state holds a minimum of 25 per cent of shares – the state liquidator may be appointed. A natural person acting in the name of an insolvency practitioner company is expected to complete further related training (i.e. beyond the liquidation and asset controller qualification). Natural persons cannot be insolvency practitioners.

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Part B

Business Reorganisation

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

There are no specific incentives for concluding an extrajudicial voluntary agreement. However, the Hungarian Central Bank has issued a Restructuring Recommendation in respect of best practices for bank workouts. Best practices for bank workouts are also set out in the **Budapest Principles** which is a non-binding recommendation of the Hungarian Bank Association and which echoes the so-called 'London Rules' of the Bank of England.

What is the nature and purpose of the reorganisation procedure?

TThere is one reorganisation procedure available under the Insolvency Act: the bankruptcy reorganisation procedure (csődeljárás). A second preventive restructuring procedure (szerkezetátalakítás) will be available from 1 July, 2022 under the Restructuring Act. **Click here** for a high level overview of the two reorganisation procedures.

Preventive restructuring procedure (Restructuring Act)

The preventive restructuring procedure is aimed at restoring the financial equilibrium of the debtor, which includes changing the composition, conditions or structure of the debtor's assets and liabilities or of any other part of its capital structure, such as the sale of the debtor's assets or parts, the sale of shares in the debtor, including if the debtor is sold as a going concern, and any other necessary operational changes or a combination of these elements (Article 3 (1)).

The purpose of restructuring is to adopt and implement, with individual creditors of the debtor or all of its creditors, a restructuring plan to prevent the debtor from becoming insolvent in the future and to ensure its viability (Article 6 (1)).

Bankruptcy reorganisation procedure (Insolvency Law)

The purpose of the reorganisation procedure is to enable the debtor to enter into a composition arrangement with its creditors while benefiting from a stay on payments (Article 1).

A composition arrangement is an agreement between the debtor and its creditors setting out the conditions for debt settlement, including any allowances and payment facilities relating to the debt, the remission or assumption of certain claims, debt-to-equity swap, guarantees for the satisfaction of claims and other similar securities, the approval of the debtor's plan for restructuring and for cutting losses, and any and all other action deemed necessary to restore or preserve the debtor's solvency (Article 19).

If no composition is arranged, or if the arrangement fails to comply with the relevant regulations, the court dismisses the reorganisation procedure, declares the debtor insolvent ex officio and orders the liquidation of the debtor (Article 21/B).

Who can commence the process and what entry conditions apply?

Preventive restructuring procedure (Restructuring Act)

The debtor may decide to restructure if it is likely to become insolvent (Article 6 (1)). Restructuring cannot be initiated on a number of situations including if the debtor is subject to a restructuring procedure or is in the process of being wound up, or if a final decision has been published to initiate its reorganisation or liquidation under the Insolvency Act (Article 7).

The decision-making body of the debtor or, in the case of a debtor of a single-member legal person, its founder or sole member, decides to restructure on the basis of the submission of the executive officer. The submission must include, among other things, a description of the likelihood that the negotiations with the creditors can be successfully concluded and that a restructuring plan may be adopted (Article 12).

Bankruptcy reorganisation procedure (Insolvency Law)

While the Insolvency Act contains a definition of 'insolvency', there is no reference to insolvency or threatened insolvency in respect of the entry conditions for this procedure.

Only the directors of commercial debtors may submit an application for the opening of the reorganisation procedure. The debtor may not file a petition for reorganisation if a reorganisation procedure is already pending against it, or if a request for its liquidation has been submitted and a decision has already been adopted in the first instance for the debtor's liquidation (Article 7). The Insolvency Law further specifies the documents, including the financial statements, that need to be submitted together with the application to the court (Article 8). If the court does not reject the application outright, it shall, within one working day, publish the request of the debtor in the Official Gazette and order a temporary stay on payments (i.e. moratorium) with immediate effect (Article 9 (1)). Upon a further review of the application, the court has to either reject the application or open the reorganisation procedure (Article 10).

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?

Preventive restructuring procedure (Restructuring Act)

Yes, the debtor requests the court to open the proceedings in the framework of a non-contentious civil restructuring procedure (Article 10). The court provides the debtor with a general or limited moratorium if and as requested by the debtor (Article 33). The court can appoint a restructuring expert (szerkezetátalakítási szakértő) (Article 23). The debtor shall submit the approved restructuring plan to the court for approval (Article 54 (1)).

Bankruptcy reorganisation procedure (Insolvency Law)

Yes, the entire procedure is overseen by the court. On acceptance of the application and its publication in the Official Gazette, the reorganisation procedure is officially commenced and is conducted under the court's supervision (Articles 9 and 10).

Are there any hybrid procedures?

No hybrid reorganisation procedure is available.

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

Preventive restructuring procedure (Restructuring Act)

Yes, the debtor remains in possession and can carry on its business activities. The tasks of the restructuring expert are contributing to the preparation of the restructuring plan, assisting the debtor and affected creditors in the negotiation and adoption of the restructuring plan, supervising the debtor's actions related to the negotiation of the restructuring plan and the acceptance of the plan by the creditors concerned, supervising the debtor's management during the negotiations on the plan, and performance of other tasks (Article 25 (1)).

The task of the restructuring expert shall include the supervision of the debtor's management if it is included in the application for the approval of the insolvency practitioner company or, if at the time of the appointment of insolvency practitioner company, the creditors request it (Article 26 (1)).

Bankruptcy reorganisation procedure (Insolvency Law)

Yes, the debtor remains in possession and can carry on its business activities. The directors of the debtor, including its managing body, and shareholders, shall exercise their respective rights provided these do not violate the powers vested in the insolvency practitioner company (known as the administrator) (Article 13 (2)). The insolvency practitioner has to monitor the debtor's business activities with a view to protecting the creditors' interests and preparing for the composition with creditors (Article 13 (3)). Further duties of the insolvency practitioner are set out in Article 13 (3). Importantly, the debtor may only make payments with the consent of the insolvency practitioner, including payments for liabilities that arise from the debtor's continuing economic activity (Article 11 (2) (g)).

Is there a need to appoint an insolvency practitioner?

Preventive restructuring procedure (Restructuring Act)

Not necessarily. The court may, on request in connection with the restructuring petition, approve the participation of a restructuring expert or appoint of its own accord a restructuring expert in the cases specified in the Act (Articles 23 (1) and 29).

Bankruptcy reorganisation procedure (Insolvency Law)

Yes, the participation of an insolvency practitioner is mandatory. The insolvency practitioner company is selected from an official list and appointed by the court in its judgment opening the procedure (Article 10 (1)). The company then designates the natural person acting in its name.

Is there any applicable stay or moratorium?

Preventive restructuring procedure (Restructuring Act)

Yes, to facilitate the negotiation of the restructuring plan, at the request of the debtor, the court orders an individual stay on enforcement actions (moratorium) (Article 33). The moratorium may be general or limited. The general moratorium shall apply to all creditors, including secured creditors, with the exception of certain parties specified by law which include creditors with financial collateral (e.g. security deposit and close-out netting), while the limited moratorium shall cover affected creditors as determined by the debtor (Article 36 (1) and (2)). Pending the final decision on the application for a moratorium, the court provisionally orders a stay.

In addition to the general content of the application that may be submitted in the restructuring procedure, the application for the commencement of restructuring by the court shall contain a statement by the debtor as to whether it will apply for a general moratorium in the proceedings (Article 22 (1) (f)).

If the court orders a general moratorium, the restructuring procedure shall be considered as a public restructuring procedure from the date of the publication of the temporary imposition of the general moratorium in the Company Gazette until the final conclusion or termination of the procedure. The court establishes the public restructuring procedure by means of an order published in the Company Gazette (Article 15 (1)).

Bankruptcy reorganisation procedure (Insolvency Law)

Yes, the court orders a temporary stay on payments within one business day of receipt of the application for the commencement of the procedure. The objective of the moratorium on payments is to preserve the assets under the reorganisation procedure with a view to reaching a composition with creditors (Article 11). During this period the debtor, the insolvency practitioner, the financial institutions and creditors cannot take any measure that would be contradictory to the objective of the moratorium.

The moratorium applies to secured as well as unsecured creditors. Claims for wages, value added tax as well as certain other types of preferred claims specified in legislation are excluded from the application of the moratorium (Article 11 (1) and (2)). The moratorium lasts 180 days (Article 10 (4)). It may be extended up to a maximum of 240 days from the time of the opening of the reorganisation procedure, if the debtor is able to secure the majority of the votes of creditors with voting rights. A majority of the affirmative votes from the creditors with voting rights (which are weighted in accordance with the value of their claims) needs to be obtained in respect of both secured and unsecured classes (Article 18 (8)). Creditors are entitled to one whole vote for every HUF 50,000 (approx. €139) of registered or uncontested claims and there is no possibility of a fractional vote. Creditors of claims under HUF 50,000 also have one vote (Article 18 (5)).

However, the moratorium may be extended for a longer period up to a maximum of 365 days if the debtor obtains two-thirds by value of the votes of each class of secured creditors and unsecured creditors (Article 18 (9)).

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

Preventive restructuring procedure (Restructuring Act)

During the moratorium, creditors subject to the moratorium may not suspend the performance of essential executory contracts because of the debtor's non-payment of debts that arose before the moratorium and have fallen due, nor may they cancel or modify these contracts in any way on terms unfavourable to the debtor. This provision does not affect the exercise of the creditor's rights under the contract if the debtor fails to fulfil any contractual obligation other than the obligation to pay (Article 35 (1)). Moreover all contracts of the debtor (not only essential contracts) enjoy protection from third-party termination clauses. (Article 35 (3).

Bankruptcy reorganisation procedure (Insolvency Law)

Yes, there are provisions with respect to preventing termination of contracts by third parties. A contract may not be avoided, and it may not be terminated on the grounds of commencement of the reorganisation procedure or of the debtor's failure to settle its debts incurred before the commencement of the moratorium during that moratorium (Article 11 (2) (h)). There are no equivalent provisions with respect to essential contracts as under the preventive restructuring procedure.

Is new financing protected by law?

Preventive restructuring procedure (Restructuring Act)

New financing, interim financing and reasonable, immediately required costs in relation to negotiations on a restructuring plan are protected from avoidance actions in a subsequent insolvent liquidation of the debtor. Thus they are not considered null and void or voidable on the ground that they are harmful to the whole of the creditors in the event of the debtor's subsequent insolvency, unless other circumstances justifying the nullity or voidability of the transaction exist. This also applies to reasonable transactions that are necessary for the implementation of the restructuring plan without delay and which are carried out in accordance with the restructuring plan approved by the court (Article 65 (1) and (2)).

Civil, administrative or criminal liability proceedings may not be initiated against the person providing new financing or interim financing in the event of the debtor's future insolvency on the ground that such financing is detrimental to the general body of creditors (Article 65 (3)).

These provisions only apply if in the event of new financing, the restructuring plan has been approved by the court. In the case of interim financing required by the debtor during the proceedings, it has also been approved by a vote of at least 75 per cent by all secured affected creditors and affected creditors other than secured creditors, or has been approved by the court as part of the restructuring plan. For a transaction immediately necessary for the negotiation of a restructuring plan, such new financing must be approved by a voting number representing at least 75 per cent of all secured affected creditors and affected creditors other than secured creditors, or has been approved by the court as part of the restructuring plan (Article 65 (6)).

Bankruptcy reorganisation procedure (Insolvency Law)

No, there are no express provisions governing new financing in the reorganisation procedure. Interim or new financing may be provided with the approval of the insolvency practitioner but those who provide that financing do not enjoy priority established by law in the case of subsequent insolvent liquidation. However, with the approval of the creditors representing the majority of claims, the debtor may grant security to secure any new financing. In that case the party providing financing will be prioritised in a subsequent liquidation procedure (Article 13(5)).

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

Preventive restructuring procedure (Restructuring Act)

The debtor shall register and classify in classes of creditors the claims of which it is aware (Article 40 (1)). Affected creditors' claims shall be classified as follows: secured creditors' claims; creditors' claims related to economic activity; other creditors' claims; and creditors' claim arising from a transaction of interest to the debtor (Article 42 (1)). The measures contained in the restructuring plan shall ensure the principle of equal treatment of affected creditors of the same class of creditors (Article 45 (2)).

Bankruptcy reorganisation procedure (Insolvency Law)

Secured and unsecured creditors vote in separate classes on the composition agreement (Article 20).

Voting rights are assigned to all creditors who registered their claim by the deadline specified in Article 10 (2) (f), who paid the registration fee and whose claim has been recognised or uncontested (Article 18 (4)). The voting rights are weighted based on the amount of the claim (Article 18 (5)).

What are the majorities required to approve a reorganisation plan?

Preventive restructuring procedure (Restructuring Act)

The debtor and the affected creditors with voting rights shall participate in the adoption of the restructuring plan. A restructuring plan shall be deemed to be adopted if it receives, in all classes of creditors, the support of a numerical majority of all eligible or uncontested creditors in the creditor class, as well as a majority of votes in relation to the total number of votes that may be cast by the affected creditors in the class of creditors, which is determined by value of claims.

If the restructuring plan is not approved under Article 51 (2) or (3), but has been approved by at least one of the classes of creditors referred to in Article 42 (1) (a), (b) and (c), the debtor or, together with the debtor's consent, the affected creditor with voting rights and the capital owner having sole or majority control over the debtor, may submit an application to the court for the approval of the restructuring plan with cross-class cram down across classes of creditors. This imposes the decision of the majority of creditors in those classes on other classes of creditors voting against the reorganisation plan, subject to a number of statutory protections for non-consenting creditors in accordance with the Restructuring Directive (Article 62 (2)).

By way of derogation from the general rule, if the debtor is an SME, separate rules apply (Article 52 (1)-(3)).

Bankruptcy reorganisation procedure (Insolvency Law)

A composition agreement needs to be approved in a composition meeting. It is deemed to be approved by creditors in the composition meeting if the majority of creditors holding voting rights in respect of secured and unsecured claims vote in favour (Article 20 (1)). Specifically, the majority 50 per cent + 1 of votes (calculated in accordance with creditors' claims) is required in both classes.

The agreement may not provide for less favourable conditions in respect of the dissenting creditors or creditors who were entitled to participate in the meeting but failed to do so, than in respect of the consenting creditors in the respective class as well as

creditors mentioned in Article 12 (2) subparagraphs (bc)-(bd) (Article 20 (2)). Any creditor which failed to participate shall be deemed not to have accepted the proposed agreement if the required majority supports the plan (Article 18 (5)).

Who does the reorganisation plan bind?

Preventive restructuring procedure (Restructuring Act)

If the restructuring plan is approved by the court, the rights and obligations of the debtor contained in the plan cover all affected creditors and the debtor, as well as the parties joining the restructuring plan by means of a voluntary declaration (Article 9 (1)). It is also binding on classes of non-consenting creditors in certain circumstances described above.

Bankruptcy reorganisation procedure (Insolvency Law)

The composition agreement binds all dissenting or non-participating creditors who were entitled to participate in the agreement and failed to participate despite being properly notified. It also binds creditors whose contested claims had to be secured by provisions or by way of guarantee to ensure future payment of such claims (Article 20 (2)). Provisions are set aside on the basis of the interim account to cover disputed creditors' claims (Article 12 (6) and (7)).

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

Preventive restructuring procedure (Restructuring Act)

There is no set timeframe for the procedure. The court may order the moratorium for the period specified in the application, but for a maximum of four months. The moratorium may be extended, and a new moratorium may be imposed. The total duration of the moratorium shall not exceed 12 months, calculated together with the duration of the extension or the new moratorium ordered after the expiry of the duration of the moratorium. The duration of the temporary stay shall also be included in the duration of the moratorium (Article 36 (3)).

Bankruptcy reorganisation procedure (Insolvency Law)

There is no set timeframe for the procedure. The moratorium may be extended for a total of not more than 365 days (Article 18 (9)). To this timeframe there should be added few days/weeks related to the temporary moratorium at the beginning of the procedure (Article 9), and few weeks available for the approval of the composition agreement by the court (Article 21/C (3)).

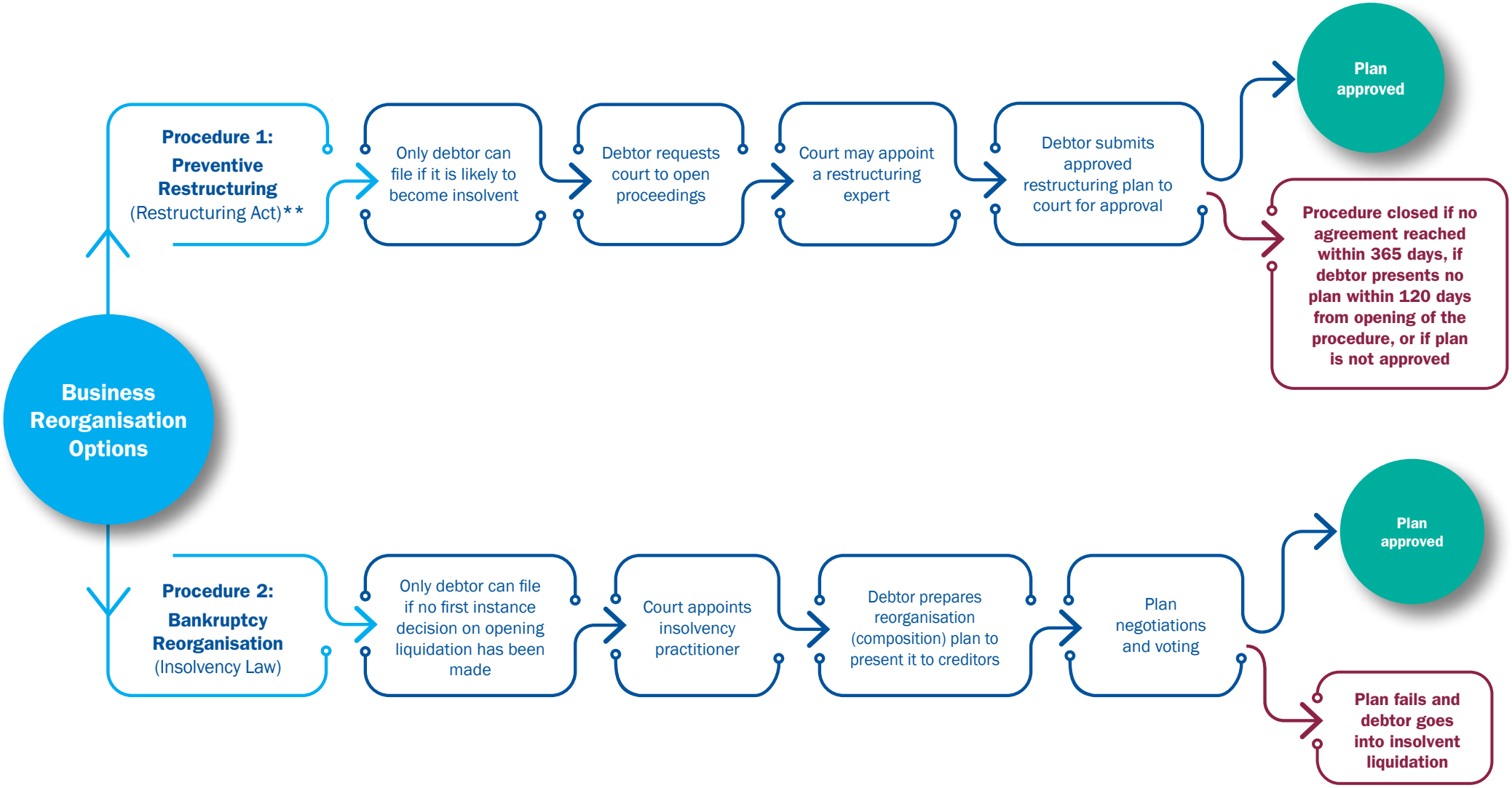
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

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

Special features/observations:

- As a member of the European Union, Hungary has transposed the Restructuring Directive into its legislation, which will come into force in 2022.
- Historically Hungary has had a low number of formal reorganisation proceedings (csődeljárás).

Overview of Hungarian 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

** Available from 1 July 2022 under the Restructuring Act

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