

Business Reorganisation Assessment

📍 Kazakhstan



European Bank
for Reconstruction and Development



Special thanks to:

Dentons
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General Information

Macro Data

18.871

Population (million)¹

3.2%

GDP growth rate¹

US\$ 9,830

GDP per capita¹

₸

Kazakhstani tenge – KZT

Currency

20%

Corporate tax rate²

6.4%

Inflation rate¹

5.2%

Unemployment rate¹

Insolvency Legislation

The primary legislative text governing insolvency and restructuring in Kazakhstan for entrepreneurs and legal entities (other than banks) is the **Law on Rehabilitation and Bankruptcy** (the Insolvency Law) dated 7 March 2014 No. 176-V, as amended.³ Other relevant secondary legislation in relation to insolvency practitioners includes the **rules for conducting the qualification exam** approved by the Order of the Deputy Prime Minister of the Republic of Kazakhstan – Minister of Finance of the Republic of Kazakhstan No. 191 dated 28 April 2014, as amended, and the **rules for the upgrade of the qualifications of administrators** approved by the Order of the First Deputy Prime Minister of the Republic of Kazakhstan – Minister of Finance of the Republic of Kazakhstan dated 29 April 2020 No. 427. Judges analyse the debtor's insolvency based on the opinion on financial stability of the debtor, prepared in accordance with the **rules on calculation of coefficients and determination of boundaries of classes of financial stability** approved by the Order of the First Deputy Prime Minister of the Republic of Kazakhstan – Minister of Finance of the Republic of Kazakhstan No. 372 dated 9 April 2020.

Insolvency Data

The State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan (the State Revenue Committee) is responsible for compiling insolvency statistics. Their website contains a list of debtors (entrepreneurs and legal entities) which have been declared bankrupt by the court or which are subject to the rehabilitation procedure **here** and a list of debtors (entrepreneurs and legal entities) in relation to which a court ruling terminating the rehabilitation procedure entered into force **here**⁴. Below is a summary of relevant data available on the State Revenue Committee's website:

	Number of court decisions declaring insolvent liquidation (bankruptcy)	Number of court decisions on application of the rehabilitation procedure
2018	3,493	Not available
2019	3,129	Not available
2020	2,763	329
2021	397 (as of 31 March 2021)	10 (as of 31 March 2021)

There is no information on how many rehabilitation proceedings, which are reorganisation proceedings by nature, result in an approved rehabilitation plan.

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

² PWC – Source as of June 2021:
taxsummaries.pwc.com/kazakhstan/corporate/taxes-on-corporate-income

³ An official translation of the Insolvency Law into Russian is available at: zan.gov.kz/client/#!/doc/77927/rus

⁴ It should be noted that the information may be incomplete or not updated regularly.

Company Information

The company law framework in Kazakhstan is mainly governed by the Civil Code (both **general** and **special** parts), the **Law on Limited and Additional Liability Partnerships** dated 22 April 1998, as amended, and the **Law on Joint Stock Companies** dated 13 May 2003, as amended. Legal entities are further regulated by the **Law on State Registration of Legal Entities and Registration of Branches and Representative Offices**

No. 2198 of 17 April 1995. The company register of Kazakhstan is managed by the Ministry of Justice and the non-profit joint-stock company “State Corporation” “Government for Citizens” and is freely available at no charge **here**. Official statistical data regarding the overall number of companies in Kazakhstan is available **here**.



Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency (bankruptcy) court cases are dealt with by specialised economic courts. The territorial jurisdiction of the court is established based on the debtor’s legal seat of operations in respect of legal entities, or residence in respect of entrepreneurs. The Academy of Justice of the Supreme Court of the Republic of Kazakhstan provides, among other things, educational programmes and training for professional development of the judiciary, including **insolvency programmes** for judges in Kazakhstan.

The Ministry of Finance and the State Revenues Committee are the state authorities responsible for supervision in the sphere of rehabilitation and insolvency (bankruptcy). The wide-ranging competences of the State Revenues Committee include maintenance of the register of authorised insolvency practitioners (known as rehabilitation or bankruptcy administrators) which is publicly available **here**, consideration of complaints about the actions of insolvency practitioners and dismissal of insolvency practitioners, as well as appointment of the insolvency practitioner candidate nominated by the meeting of creditors. Insolvency practitioners should be qualified in accountancy, law or economics, or hold a business degree, and should have at least three years of post-qualification experience in legal, economics, accounting, financial, auditing or compliance matters.

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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 and there are no express obligations for management or shareholders of the debtor to take steps to address potential insolvency (other than general obligations to act in the interests of the debtor in good faith with respect to joint stock companies and limited liability partnerships).

What is the nature and purpose of the reorganisation procedure?

There are two reorganisation procedures under the Insolvency Law that allow a debtor in a state of temporary insolvency to restore its solvency: the rehabilitation procedure (reabilitatsionnaya protsedura) and the debt restructuring procedure (protsedura restrukturizatsii zadolzhennosti).

Click here for an overview of these reorganisation procedures.

The rehabilitation procedure is a court-supervised procedure under which the debtor is subject to organizational, economic, managerial and financial measures through a rehabilitation plan aimed at restoring its solvency.

The debt restructuring procedure is also court-supervised and is aimed at reaching a voluntary agreement on restructuring with all of the debtor's creditors.

A settlement agreement may technically be concluded at any stage of insolvent liquidation (bankruptcy) proceedings (Article 112-1).

Who can commence the process and what entry conditions apply?

The applications for the rehabilitation procedure and the debt restructuring procedure may be made on the occurrence of 'temporary insolvency' of the debtor. Temporary insolvency is defined as when a debtor has not fulfilled one or more obligations towards first-priority or first-rank creditors (such as employees) within three months from the date when they are due or for other creditor ranks of lower priority if the obligations are not fulfilled within four months from the date when they are due (Article 5-1).

Rehabilitation procedure

Both the debtor and its creditors can file an application for the opening of the rehabilitation procedure with the court on the grounds of the debtor's temporary insolvency (Article 5-1). The temporary insolvency practitioner conducts a financial stability assessment to assess if the debtor belongs to class II financial stability, i.e. there are no grounds for declaring the debtor bankrupt but there are grounds for applying the rehabilitation procedure (Article 49). From the date when the court decision on initiation of the procedure enters into force, the debtor and creditors have a three-month period for preparing and approving the rehabilitation plan, which should provide the measures that the debtor will take to settle its debts, and the deadlines for settling debts (Article 73 (2)).

It is also possible for the debtor and, in respect of legal entities, its owner or founder, to request the suspension of insolvent liquidation (bankruptcy) proceedings and the initiation of a rehabilitation procedure by submitting an application to the insolvency practitioner (known as the bankruptcy administrator) for a meeting of creditors to consider the proposed rehabilitation

plan and possible transfer (Article 95-1.1). For a court to suspend insolvent liquidation (bankruptcy) proceedings and start rehabilitation, consent of the meeting of creditors should be obtained and the insolvency practitioner should issue a conclusion on the financial stability of the debtor, according to which the debtor, based on the results of the implementation of the measures provided for by the rehabilitation plan, should achieve class I financial stability (Article 95-1), i.e. where there is no need to recognise the debtor as insolvent or file for a rehabilitation procedure.

Debt restructuring procedure

This procedure can be commenced solely by the debtor in the case of temporary insolvency where no rehabilitation procedure or insolvent liquidation proceedings have been opened. The debtor must apply to the court with documents evidencing temporary insolvency, and the court within 10 working days from the debtor's application will either open the procedure or to reject the application. The basis for the court's refusal is the debtor's failure to submit documents evidencing temporary insolvency or the existence of a prior rehabilitation procedure or prior insolvent liquidation proceedings initiated by the court (Articles 28-1 (1) and (3)). There is no option for a debtor in insolvent liquidation proceedings to request a transfer to the debt restructuring procedure. However, during the liquidation proceedings a settlement agreement may be concluded which, to some extent, is similar to the debt restructuring procedure as it is aimed at restructuring debts owed to creditors.

References to Articles in this part 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?

Yes, both the rehabilitation procedure and the debt restructuring procedure are fully court-supervised from opening until conclusion (Articles 63 and 28-1). The court in the rehabilitation procedure: formally commences and terminates the rehabilitation procedure; approves the rehabilitation plan (Article 73 (2)); approves amendments and additions to the rehabilitation plan; hears cases on disputes over property where the debtor is a defendant; and resolves disputes between participants of the rehabilitation procedure (Article 67).

The court in the debt restructuring procedure decides on: application of the debt restructuring procedure (Article 28-1.3.1); approval of the debt restructuring agreement (Article 28-4.1); and approval of the termination of the debt restructuring agreement (Article 28-4.8).

Are there any hybrid reorganisation procedures?

No, there are no hybrid reorganisation procedures in which part of the procedure is carried on outside of court.

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

Rehabilitation procedure

It depends on the court's ruling. Once the court rules to open a rehabilitation procedure, the meeting of the creditors may appoint either the debtor entrepreneur or a person appointed by the debtor's shareholders or owners so that the debtor remains in possession and continues to manage its business, or a permanent insolvency practitioner (known as a rehabilitation manager) to manage the debtor's business (Article 69).

Debt restructuring procedure

Yes, the debtor remains in full possession and is not supervised by an insolvency practitioner. However the debtor is prohibited from entering into any transactions for the alienation of its property (Article 28-2).

Is there a need to appoint an insolvency practitioner?

Rehabilitation procedure

Yes, at the initial stage of the procedure, after opening of the rehabilitation procedure and until the meeting of creditors decide on who manages the debtor's business in rehabilitation, a temporary insolvency practitioner (known as an administrator) is involved. The temporary insolvency practitioner draws up a register of creditors' claims and assesses the financial condition of the debtor with a view to providing an assessment regarding its financial stability (Articles 1.29 and 70). The temporary administrator does not manage the debtor's business and does not receive the debtor's property (Articles 12.6 and 69). Following the meeting of creditors, a permanent insolvency practitioner (rehabilitation manager) may take over management of the debtor's operations. Alternatively, the creditors may decide that the debtor entrepreneur or a body or person authorised by the owner or founder of the debtor, where the debtor is a legal entity, should manage the debtor's business (Article 69.1.1). Thus the appointment of a permanent insolvency practitioner may be avoided.

Debt restructuring procedure

No, the debtor is not subject to any supervision or oversight by an insolvency practitioner.



Is there any applicable stay or moratorium?

Rehabilitation procedure

Yes, from the date of entry into force of the court decision on opening of the procedure, the execution of court decisions, arbitral awards, and decisions of state revenue bodies are all suspended, with the exception of payments to citizens to whom the debtor is responsible for causing harm to life or health (excluding moral damage). All claims against the debtor may be made only within the rehabilitation procedure and no execution may be levied on the debtor's bank accounts or other assets (including by secured creditors with respect to claims where debtor is either a borrower or pledgor) and no shares in the debtor may be alienated (Article 50). During this period the debtor may not alienate any assets of the business outside the ordinary course of commercial operations.

A security creditor may nevertheless ask the court to enforce its security: in the case of violations of the Insolvency Law or repayment schedule of such creditor; in the case of a decrease in the value of property that is the subject of a pledge; or if the pledged property is not required for the continuation of the debtor's activities or the implementation of the rehabilitation plan (Article 77 (4)).

After the rehabilitation plan is approved the accrual of interest on loans and issued bonds is stopped and all limitations (seizures, prohibition to use, etc.) imposed on assets of the debtor are terminated upon debtor's demand (Article 68).

Debt restructuring procedure

Yes, there is a limited moratorium. From the date of the court decision on application of the debt restructuring procedure, creditors are prohibited from bringing any application to declare the debtor bankrupt and penalties or fines do not accrue. The debtor is also prevented from alienating any of its assets outside the ordinary course of commercial operations (Article 28-2.1).



From the date of entry into force of the court decision approving the debt restructuring agreement, the execution of court decisions and arbitral awards are terminated, with the exception of payments to individuals to whom the debtor is responsible for causing harm to life or health (Article 28-5.3). All restrictions imposed by state authorities on accounts of the debtor are also lifted without any need for relevant decisions of the authorities that imposed them (Article 28-5.2). Imposition of new restraints on the debtor's property and other restrictions on disposal of the debtor's property are allowed only within claims for invalidation of the transactions and recovery of property from unlawful possession brought against the debtor (Article 28-5.4).

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

Not for either the rehabilitation or debt restructuring procedure. There is protection for termination of contracts only in the bankruptcy (liquidation) proceedings. In particular, the initiation of the proceedings cannot be a basis for unilateral refusal to perform a contract concluded before the proceedings and may not result in termination of the agreement (Article 8). There are otherwise no specific provisions in the Insolvency Law for protection of contracts essential for continuation of the debtor's operations.

Is new financing protected by law?

No, new financing under the rehabilitation and debt restructuring procedures does not benefit from special protection under the Insolvency Law.

However, the rehabilitation plan can provide for new loans as a source of financing for the debtor (Article 73.5). Moreover, there is an instrument called “sanation” under which the owner of the debtor/creditor or any other persons may provide financial assistance to the debtor or perform any other complex of measures in order to mobilise reserves of the debtor and enhance the debtor’s financial and economic situation. On termination of the rehabilitation procedure due to achievement of the sanation purposes, the sanation participants are entitled to receive shares/capital interest of the debtor in proportion to the sum of financial assistance provided.

Claims arising from a loan received by the insolvency practitioner during insolvent liquidation proceedings are of the second priority. These claims, however, cannot be satisfied unless all of the other claims of the same second priority are satisfied (Article 100.3 and Article 101.5).

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

Rehabilitation procedure

Yes. The Insolvency Law refers to the following six classes of creditor claims in descending order of priority: creditors for compensation for damages caused to life or health or for the payment of employees; creditors on liabilities secured by pledge of property of the debtor; creditors on taxes and interest; creditors under civil or other obligations; creditors for compensation of losses and recovery of penalties; and creditors which have submitted their claims after the required deadline (Article 100).

While the Insolvency Law does not contain express provisions for creditors to be organised into groups for voting purposes, it requires, for the approval of the rehabilitation plan, the consent of each of the secured creditors i.e., creditor secured by a Kazakh law governed pledge/mortgage (the second rank) and unsecured creditors with civil or other obligations (the fourth rank) (Article 26-1.2). The Insolvency Law contains a general restriction on shareholders voting. This covers shareholder loans. Creditors which are affiliates of the debtor cannot vote at creditors’ meetings until all of the other claims are satisfied (Article 26.4.2).

Debt restructuring procedure

No, as all creditors need to approve the debt restructuring plan (Article 28-3).

What are the majorities required to approve a reorganisation plan?

Rehabilitation procedure

A rehabilitation plan is considered agreed where more than 50 per cent of the votes of creditors at the creditors’ meeting approve the plan and the plan receives support from a majority of votes from the creditors of the second rank (i.e. secured creditors) and a majority of votes from the creditors of the fourth

rank (i.e. unsecured creditors) (Article 26.1). The weight of each creditor’s vote is determined on the basis of the principle “one Kazakhstani tenge of claims equals one vote” (Article 26.3).

The approval of both classes of creditors is mandatory i.e., there is no cross-class cram down where the decision of one class in favour of the plan binds the other class of creditors voting against the reorganisation plan, subject to a number of statutory protections for non-consenting creditors.

Debt restructuring procedure

No cram down mechanism is available. All creditors need to approve the debt restructuring plan (Article 28-3).

Who does the reorganisation plan bind?

Rehabilitation procedure

Subject to the majority approval of both classes and court ratification, any non-consenting creditors included in the plan will be bound by it (Article 26-1).

Debt restructuring procedure

A debt restructuring agreement must be concluded with all creditors of the debtor. It is binding on all creditors from the date of entry into force of the court ruling approving the agreement (Article 28-4).



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

Rehabilitation procedure

The term of the procedure is decided by the court and can be extended once for up to six months (Article 64). The rehabilitation plan must be developed by the debtor together with its creditors and the insolvency practitioner within three months from the date of entry into force of the court decision opening the procedure. The period for implementing a rehabilitation plan may not exceed five years (Article 73).

The moratorium arises on opening of the procedure and is in force for the duration of the procedure (Articles 50.1.2 and 68.1.3).

Debt restructuring procedure

The debtor must enter into a debt restructuring agreement with all creditors within two months from the date of entry into force of the court decision on initiation of the procedure. The implementation of the agreement should not exceed a period of three years (Article 28-3).

The moratorium arises on the date of approval of the debt restructuring agreement and is in force for the duration of the procedure (Article 28-5.3).

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

No, the UNCITRAL Model Law has not been adopted and there are no cross border insolvency provisions in the Insolvency Law. In general, decisions of foreign courts can be recognised and enforced in Kazakhstan based only on relevant treaties ratified by Kazakhstan, or if the law so provides, or based on the principle of reciprocity. In practice, the reciprocity principle is not widely used in Kazakhstan. Kazakhstan does not have treaties on execution of court decisions with UK

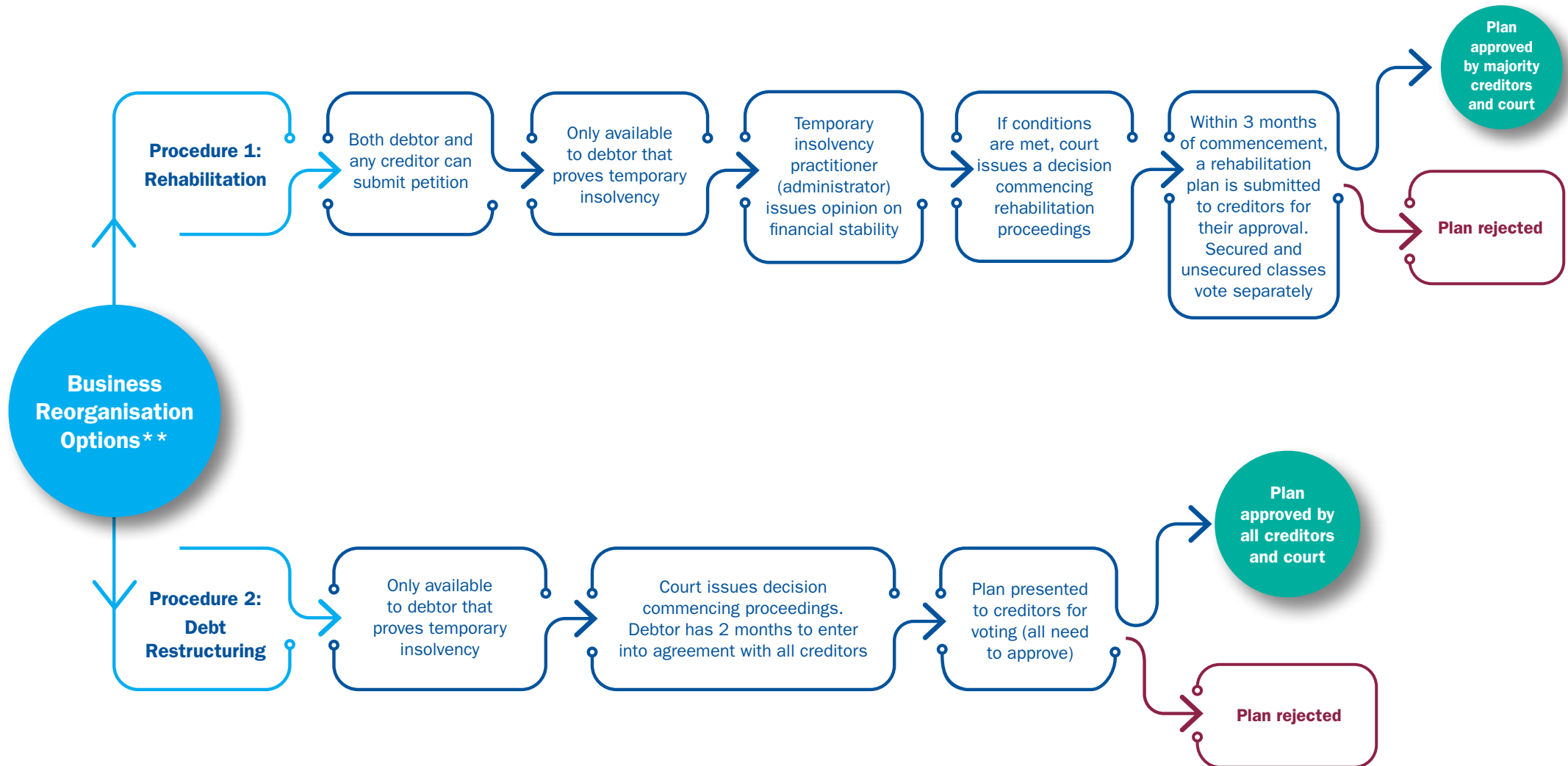
and EU member states (except for Lithuania). There are also no established mechanisms in Kazakhstan legislation for recognition of foreign insolvency proceedings.

Special features/observations:

- Like many former Soviet Union economies, Kazakhstan has an amicable settlement mechanism, where a debtor can reach a restructuring agreement with its creditors, but in the case of Kazakhstan this can only be used as an exit from insolvent liquidation (bankruptcy) proceedings.
- The debt restructuring procedure is also rarely used in practice since it requires unanimous approval by creditors.



Overview of Kazakhstan 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.

** Within insolvent liquidation (known as bankruptcy), parties can reach a settlement at any time during the procedure. The debtor can also transform the liquidation procedure into a rehabilitation procedure in certain conditions.

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