Business Reorganisation Assessment

Kosovo

European Bank
for Reconstruction and Development

Special thanks to:

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National Council for Economic Development & Secretariat

Part A

General Information

Macro Data

1.807	4.5%	US$ 4,860	€ Euro – EUR	10%	0.3%	25.6%
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 proceedings for registered businesses in Kosovo is the **Law No. 05/L-083 on Insolvency** (the Insolvency Law), adopted in 2016 and published in the Official Gazette of the Republic of Kosovo No. 23/7.

In addition, in 2018 Kosovo adopted the **Law No. 06/L-016 on Business Organisations**, which includes provisions relating to the initiation of insolvency proceedings for limited liability companies and joint stock companies.

Insolvency Data

There is no publicly available statistical data on insolvency-related matters.

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

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

Company Information

The company law framework in Kosovo is governed mainly by the **Law on Business Organisations**, the **Law on Banks, Microfinance Institutions and Non-bank Financial Institutions** and the **Law on Reorganisation of Certain Enterprises and their Assets** which applies to certain enterprises and their assets under the administrative authority of the **Privatization Agency of Kosovo**.

A project called **Support to the Civil Code** to reform the Civil Code of Kosovo is ongoing with support from the European Union. The project aims to harmonise local legislation with the European standards in the areas of civil law and property rights.

The **Kosovo Business Registration Agency**, which operates under the umbrella of the **Ministry of Trade and Industry of Kosovo**, is a centralised platform that gathers information for all legal forms of companies from 29 municipal registration centres across Kosovo. The website allows parties to search for registered entities free of charge. However, it does not include data on whether insolvency proceedings have been commenced with respect to a company.

Insolvency Courts, Regulatory Authorities and Practitioners

The main insolvency court in Kosovo is generally the **Basic Court in Pristina**, department for commercial matters. A decision rendered by the court can be appealed before the **Court of Appeals of the Republic of Kosovo**, department for commercial matters.

The **Ministry of Justice of Kosovo** is the main regulatory body for insolvency. It is in charge of maintaining a register of insolvency practitioners (known as administrators or, in respect of SMEs, monitors). The register is available **here**. The Ministry of Justice is also responsible for organising and conducting an entry examination for insolvency practitioners. With **Regulation No. 22/2021**, the Ministry of Justice has determined the special qualifications required by insolvency practitioners, which include successful completion of a professional examination, registration on the register of insolvency practitioners, and relevant academic qualifications.

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Part B

Business Reorganisation

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

There are no specific incentives to encourage debtors and creditors to reach an extrajudicial voluntary agreement; however, the Insolvency Law contains the option of a pre-packaged reorganisation plan, which allows to the debtor and its creditors to reach an agreement prior to applying to court for confirmation of the plan.

What is the nature and purpose of the reorganisation procedure?

There is one reorganisation procedure (procedura e riorganizimit) with the option for a pre-packaged reorganisation plan (planet e para-dakorduara të riorganizimit) and one expedited procedure for small and medium enterprises (SMEs) (procedurat e përshpejtuara për ndërmarrje të vogla dhe të mesme), under the Insolvency Law. **Click here** for an overview of the two procedures.

Reorganisation procedure

This procedure aims to restore the financial stability and viability of a debtor's business, preserve jobs and enable the business to continue operating. The Insolvency Law expressly recognises many forms of reorganisation, including debt write-off, debt rescheduling, debt-to-equity swaps and sale of the business as a whole or in part as a going concern (Article 2, sub-paragraph 1.38).

Pre-packaged reorganisation procedure

A debtor may solicit creditors' support for debt relief before the commencement of insolvency proceedings. This is accomplished in the form of a pre-packaged reorganisation plan (Article 16).

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**

If the debtor has secured the votes of its creditors for a reorganisation plan prior to initiation of the insolvency proceedings, the debtor may request the court's approval of the reorganisation plan. The court should then hold an expedited hearing at which it will determine whether the debtor's pre-filing solicitation of votes was accompanied by the disclosure of appropriate information. The court will immediately proceed with confirmation of the plan if all conditions for the proper reorganisation procedure have been fulfilled (Article 17). The pre-packaged reorganisation follows the same rules as the ordinary reorganisation and the only difference is that the plan is voted in advance.

Debt-to-equity swaps and pre-packaged sales are, in practice, often part of a pre-packaged reorganisation plan, although not expressly mentioned by the Insolvency Law.

Simplified and expedited SME reorganisation procedure

Chapter II of the Insolvency Law sets out a reorganisation procedure for small and medium-sized enterprises (SMEs). The definition of SME is any business organisation which has an annual turnover of up to €1 million or has up to 25 employees (Article 11).

A case involving an SME as a debtor should, unless specified otherwise, be treated in all respects as a reorganisation case with shorter deadlines (Article 12). For example, Article 12.2 provides that a reorganisation plan must be submitted within 30 days, instead of the usual 120 days. The role of the insolvency practitioner, known as the monitor, is also more limited than in ordinary reorganisation proceedings (Article 13).

Who can commence the process and what entry conditions apply?

Reorganisation procedure

An insolvency case is opened when the debtor files a voluntary petition for either liquidation or reorganisation (Article 18). The debtor may file when it is insolvent or when there is likelihood of insolvency (Article 19.2). Insolvency is defined as the financial state in which an entity is generally unable to pay its claims as they mature or when its probable liabilities exceed the likely value of its assets (Article 2, sub-paragraph 1.26).

An involuntary petition is filed against the debtor and, after a hearing, on notice to the debtor. The involuntary petition may be presented by two or more creditors if: the debtor has failed to pay the debt due to each of the petitioning creditors; the debtor is generally not meeting its payment obligations as they come due; and the total of unpaid debts exceeds €5,000 (Article 20).

Simplified and expedited SME reorganisation procedure

The debtor must qualify as an SME, i.e. be a business organisation with an annual turnover of up to €1 million or up to 25 employees (Article 11). Otherwise, the same entry conditions apply as for the general reorganisation procedure.

Is there any court involvement?

Reorganisation procedure

Yes, the court is involved at all stages. The petition for commencement of a reorganisation procedure should be filed with the court (Article 3).

The court can confirm the reorganisation plan if the required approval majority has been reached (consensual plan confirmation), or if the required approval majority has not been reached but other elements of the plan allow for confirmation (non-consensual plan confirmation) (Articles 79 and 80).

Pre-packaged reorganisation procedure

Yes, but the court's involvement is more limited than under the ordinary reorganisation procedure. The pre-packaged reorganisation plan is directly presented to the court for its approval, without the need to file a petition for commencement of a reorganisation procedure.

The court is required to hold an expedited hearing at which it will determine whether the debtor's pre-filing solicitation of votes was accompanied by disclosure of all the required information. If the court determines that the debtor has given the required information to its creditors and that the voting conditions are met prior to initiation of the insolvency case, the court proceeds immediately with confirmation of the plan (Article 17).

Simplified and expedited SME reorganisation procedure

The petition for commencement of a simplified and expedited SME reorganisation procedure should also be filed with the court (Article 3).

Are there any hybrid procedures?

The pre-packaged reorganisation is a hybrid procedure since the debtor presents to the court for its confirmation a pre-approved plan by the creditors. The court's involvement is minimal.

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

Reorganisation procedure

Yes, the debtor remains in possession during the reorganisation procedure, unless the debtor requests the appointment of an insolvency practitioner, also known as an administrator, either at the time of the commencement of the insolvency proceeding or later, or the court exercises its right to remove the debtor's management (Article 64). The court may exercise such right if the debtor committed fraud, if the debtor cannot manage the financial affairs in a profitable manner, or when a majority of creditors active in the case indicate that they wish to remove the debtor's management and replace such management with the insolvency practitioner.

Pre-packaged reorganisation procedure

Yes, the debtor remains in possession since no insolvency practitioner is appointed.

Simplified and expedited SME reorganisation procedure

Yes, the debtor remains in possession since the role of the monitor appointed by the court is limited to assistance of the debtor (Article 13).

Is there a need to appoint an insolvency practitioner?

Reorganisation procedure

No, it is not mandatory to appoint an insolvency practitioner, also known as an administrator, unless the debtor asks for it, or the court decides to remove the debtor's management (see above) and appoint an administrator in their place (Article 64).

If an insolvency practitioner is appointed by the court, the insolvency practitioner acts as the representative of the insolvency estate and has control over all the property of the debtor (Articles 25 and 66).

The debtor may, with the court's approval, employ one or more experts (lawyers, accountants, etc.) to represent or assist it with the preparation of the reorganisation plan (Article 65).

Pre-packaged reorganisation procedure

No, there is no need to appoint an insolvency practitioner because the pre-approved plan is directly submitted in the court for confirmation.

Simplified and expedited SME reorganisation procedure

In each case concerning an SME the court appoints a monitor, but the debtor remains in possession. The court may select the monitors from any eligible panel or listing of insolvency practitioners. The monitor consults with the debtor regarding the debtor's business, its prospects, and its ability to formulate a plan that creditors will accept. A monitor will review each plan which a SME debtor files to determine whether it proposes an economically feasible plan (Article 13).

Is there any applicable stay or moratorium?

Reorganisation procedure and simplified and expedited SME reorganisation procedure

Yes, the petition for opening the insolvency proceedings imposes an automatic moratorium and injunction regarding: initiation or continuation of any judicial or administrative action related to the debtor's business activities or its assets; enforcement of the judgment rendered against the debtor and its assets before initiating of the insolvency proceedings; taking possession of assets that are part of the insolvency estate; and any debt settlement claim against the debtor. The moratorium applies to both secured and unsecured creditors (Articles 25 and 26).

Certain exceptions to the moratorium are: the continuation of criminal proceedings; the commencement or continuation of any action or proceeding against an individual debtor related to any domestic or family matter; or an audit or financial control by the tax administration to determine but not enforce a tax liability (Article 27).

The moratorium expires 120 days after the opening of the case and may be extended in certain circumstances. However, the maximum period of the moratorium may not exceed one year from the opening of the case (Article 28).

Pre-packaged reorganisation procedure

No. There is no stay or moratorium available to support the debtor's negotiations on the plan. The debtor solicits the approval of its creditors without the need to file a petition for the commencement of insolvency proceedings.

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

Reorganisation procedure and simplified and expedited SME reorganisation procedure

Yes, any provision in an unperformed contract or in the law applicable to this contract that enables the counterparty of the debtor to terminate or modify this contract solely on the grounds of the commencement of insolvency proceedings, or the insolvency or financial condition of the debtor at any time before the closing of the proceedings, is ineffective (Articles 35 to 37). There are no specific provisions in the legislation regarding protection of essential contracts necessary for the day-to-day operations of the business.

Pre-packaged reorganisation procedure

No. There is no commencement of insolvency proceedings and therefore no relevant provision regarding protection against third party-termination of contracts by third parties on the grounds of the debtor entering a reorganisation procedure or other protections for essential contracts.

Is new financing protected by law?

Reorganisation procedure

Yes. The court may authorise the administrator to obtain unsecured credit as an administrative expense which has priority of payment over the claims of preferred and unsecured creditors. If unsecured credit cannot be obtained on this basis, the court may also authorise the administrator to obtain secured credit as administrative expense with priority over any or all administrative expenses secured by a lien on property that is not otherwise subject to a lien or secured by a lien on property that is subject to a previous lien provided that the new lien does not have priority over the existing lien. Therefore, the law allows for some form of priority for new financing but does not provide for a super-priority over existing secured creditors in respect of any security they hold (Article 34).

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

Reorganisation procedure and simplified and expedited SME reorganisation procedure

Yes, the reorganisation plan must classify creditors and holders of equity interests into different groups or classes according to their rights and obligations, subject to the similarity of their claims. Secured and unsecured creditors, as well as equity holders, should be placed in different classes. With regard to unsecured creditors, several classes may be created based on business justification for such separate classification. The proposer of the plan, either the debtor if the plan is submitted within 120 days for the opening of the case, or any other party in interest following the 120-day deadline, may designate a class (Article 71).

The voting process takes into consideration the classes specified in the reorganisation plan (Article 78).

With respect to SMEs under the expedited SME procedure, the above time period is shorter. The plan must be submitted within 30 days of the date on which the case is opened.

What are the majorities required to approve a reorganisation plan?

Reorganisation procedure and pre-packaged reorganisation procedure

The reorganisation plan is deemed to be approved if creditors holding at least 50 per cent of all claims voting in each class accept the plan. A class is deemed to have accepted the reorganisation plan without the need of voting if the plan leaves the claims or equity interests in that class unimpaired (Article 78).

A cross-class cram down may be applied by the court if the reorganisation plan has not been accepted by all voting classes (Article 80).

The court may confirm a plan of reorganisation that is not accepted by all classes only if the proponent of the plan proves that: the plan of reorganisation complies with the Insolvency Law; the plan is based on good faith; the plan provides that each impaired creditor or equity holder will receive or retain at least as much under the plan as the creditor would have received if the case been a liquidation case; no creditor will receive more than the full amount of its claim; and no distribution to a class of creditors or equity holders will take place unless all classes of claims or equity holders with a higher priority are either paid in full or have accepted the plan, i.e. the 'absolute priority' rule (Articles 79 and 80).

Simplified and expedited SME reorganisation procedure

An SME debtor may confirm a plan without meeting all requirements of an ordinary reorganisation procedure if the court finds that each of the following conditions are satisfied: the debtor has filed a written request for the implementation of a simplified and expedited reorganisation procedure applicable to SMEs within 10 days from the initiation of insolvency proceeding; the monitor has filed with the court a report on the feasibility of the plan and the report has been delivered to all interested parties before the commencement of the voting procedure; the plan has been delivered to all creditors affected by the plan, and has been approved by: 75 per cent or more of all classes of secured creditors, and at least one-third of all unsecured creditors.

The law does not specify whether these are majorities by number of creditors or by value of claims. However, the majorities in the general reorganisation procedure are majorities by value and the Insolvency Law states that a case involving an SME debtor will be treated in all respects as a reorganisation case (Article 12 (1)).

The court may conclude the plan is feasible even where the monitor has not submitted a report, since the Insolvency Law provides that this will be interpreted as the monitor having agreed to the plan (Article 13). Alternatively, where the monitor has submitted a plan the court will rule that the plan is feasible if: at least fifty percent of all unsecured creditors voting on the plan accepted the plan or in all other cases, the debtor has proved that the plan is feasible or when all secured creditors who vote for reorganisation approve the plan (Article 14).

Who does it bind?

Reorganisation procedure and pre-packaged reorganisation procedure

The court confirmed reorganisation plan binds the debtor, any entity providing security under the plan, any entity acquiring property under the plan, and any creditor or equity holder, whether or not the claim or interest of such creditor or equity holder is impaired under the plan and whether or not such creditor or equity holder has accepted the plan (Article 81).

The ordinary reorganisation plan binds all parties. However, the plan is only binding on secured creditors if they have voted on the plan (Article 82). Moreover, preferred creditors are only bound if the absolute majority vote requirement specified under Article 90 is met.

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

Reorganisation procedure

When it opens the case, the court sets the time, date and place of the first creditors' meeting for a date not later than fifteen days after the opening of the case. The court may set a preliminary court hearing 10 days after the scheduled first creditors' meeting to determine the case status and the results of the creditors' meeting (Article 25).

The debtor in possession has the exclusive right to file a plan of reorganisation within 120 days after the opening of the case. After the expiration of the period, each interested party may file a plan of reorganisation of the debtor (Article 68). The person or entity who proposes the reorganisation plan of the debtor is known as "the proposer of the plan" (Article 70).

The moratorium expires 120 days after the opening of the case, or after the debtor receives a discharge, i.e. following court confirmation of the plan, whichever occurs first. The moratorium can be extended only if the court finds more time is needed to achieve the purpose of the law. The stay cannot be extended for more than one year starting from the opening of the case (Article 28).

Pre-packaged reorganisation procedure

The court immediately proceeds with confirmation of the pre-packaged reorganisation, if all conditions for the proper reorganisation procedure have been fulfilled (Article 17). Thus the timeframe for this option is theoretically very short.

Simplified and expedited SME reorganisation procedure

SMEs must file a reorganisation plan within 30 days from initiation of insolvency proceedings instead of the 120 days which applies to the ordinary reorganisation procedure (Article 12-2). The plan in a simplified and expedited SME reorganisation procedure should be confirmed within 60 days (Article 12-4).

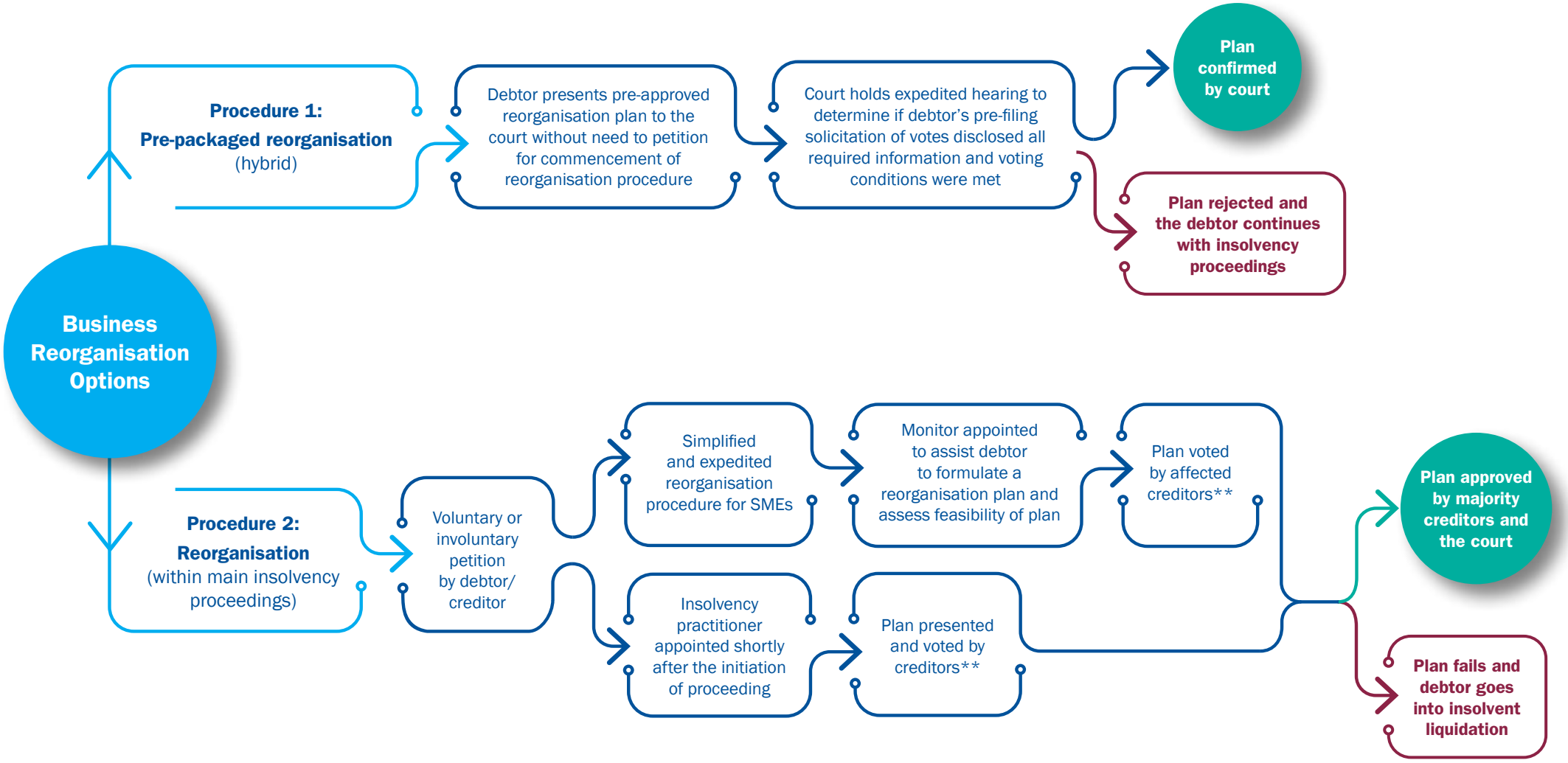
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, the UNCITRAL Model Law on Cross Border Insolvency has not been adopted but Chapter IX – Cross Border Bankruptcy is based on the UNCITRAL Model Law. Furthermore, the Insolvency Law is partially compliant with the **Regulation (EU) 2015/848** on insolvency proceedings (Article 1).

Special features/observations:

- Kosovo is the only economy where we invest where there is a dedicated simplified and expedited reorganisation procedure for SMEs.
- The Insolvency Law has a pre-packaged reorganisation procedure that allows a business to present to the court for approval, without the need to file a petition for the opening of insolvency proceedings, a pre-approved reorganisation plan. This option supports an expedited reorganisation of the debtor business.

Overview of Kosovo 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

** Cross-class cram down available

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