Business Reorganisation Assessment

Moldova

European Bank
for Reconstruction and Development

Special thanks to:

Gladei & Partners Law Firm

Turcan Cazac Law Firm

Secretariat of the Economic Council

Part A

General Information

Macro Data

2.587	4.5%	US$ 4,790	L Moldovan leu - MDL	12%	3.0%	5.5%
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 law governing insolvency proceedings for all legal persons, other than banks and state-owned entities, in Moldova is the **Insolvency Law No. 149, dated 29 June 2012** (the Insolvency Law) (as amended, including in 2020 by the Law No. 141 (the 2020 Amendment) and by the Law No. 246 and in 2021 by Law No. 252. The 2020 Amendment, effective as of 14 September 2020, introduced important changes to reorganisation procedures, as described below. A few procedural aspects, such as the jurisdiction of insolvency cases, are regulated by the Civil Procedure Code of 2003. Insolvency practitioners, known as authorised administrators, are regulated by Law No. 161, dated 18 July 2014, in full force and effect since January 2015.

Insolvency Data

Insolvency courts are required to maintain a public register of insolvency cases and upload the conclusions of any insolvency judgments on their website according to Article 7 of the Insolvency Law.

There is no centralised database of insolvency cases. Only 7 out of 15 first instance law courts offer statistics on insolvency cases registered or pending per year, with no specifics on the type of insolvency procedure or its outcome. Data is not always available for every year. According to figures for Chisinau District Court, which has the highest number of insolvency cases among all first instance courts, there were 3,865 insolvency cases at the beginning of 2020 and 1,453 new cases were opened during the year. The number of insolvency cases pending at the end of 2020 was 2,877. Further official statistics for Chisnau District Court are available on its **website.**

Once the court decides to initiate insolvency proceedings with respect to a company, this decision must be registered on the State Company Registry alongside the company's details. The 2020 Amendment introduced an electronic registry of insolvency cases. All interested parties can obtain information on the relevant insolvency case and parties to the insolvency case can obtain such electronic extracts free of charge. However, the registry is still under development and until it is operational, the conclusions of any insolvency judgments, as well any notifications to the parties to any insolvency cases, will be published in the Official Gazette of the Republic of Moldova (Monitorul Oficial). Once the insolvency case registry is operational, only decisions to close insolvency proceedings and delete the debtor from the State Company Register will be published in the Official Gazette of the Republic of Moldova.

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

[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

Company Information

The Moldovan company law framework is governed by the Civil Code, the Law on Entrepreneurs and Entrepreneurship Activity No. 845, dated 3 January 1992, the Limited Liability Company Law No. 135, dated 14 June 2007, and the Joint Stock Company Law No. 1134, dated 2 April 1997. Information about companies in Moldova is available in the State Company Register, held and administered by the Agency for Public Services.

The register is available online (at **www.date.gov.md**, duplicated at **www.idno.md**) but is not updated in real-time and the Agency for Public Services bears no liability for its accuracy. Therefore, it is standard practice to make a written application for information, together with payment of a fee.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency courts are courts of general civil jurisdiction and the competency of the insolvency court is established based on the debtor's headquarters (i.e. within the territorial jurisdiction of the relevant district court). The relevant regulatory authority for insolvency proceedings is the Ministry of Justice. Other relevant authorities involved in insolvency proceedings include the Agency for Public Services, which holds the State Companies Register and records all the modifications to the status of companies and the Real Estate Register, which registers all mortgages; the tax authorities, as they provide information on any state debts owed by the debtor; and the National Commission for Financial Markets, which maintains the Registry of Issuers of Securities, which contains any statements regarding insolvency of joint stock companies.

Insolvency practitioners are required to have professional training, a completed internship, and to pass an exam before the Authorisation and Discipline Commission established by the Ministry of Justice. They must be registered on a list maintained by the Ministry. The list is available **here**. Insolvency practitioners are members of the Union of Authorised Administrators of Moldova. The list of members of the Union of Authorised Administrators is available **here**.

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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 2020 Amendment introduced changes to Article 219 of the Insolvency Law to enable a debtor experiencing financial difficulties to file with the court a notice of initiation of discussions with creditors on an extrajudicial restructuring plan. This allows the debtor to apply to the insolvency court for a moratorium of up to two months while concluding the negotiations with creditors out of court. See further details on the Accelerated Restructuring Procedure below.

What is the nature and purpose of the reorganisation procedure?

There are two main reorganisation procedures under the Insolvency Law.

The first is the accelerated restructuring procedure (procedură accelerată de restructurare) which aims to preserve the debtor's business as a going concern, maintain employment and to satisfy outstanding claims by application of a restructuring plan (Article 218). In this procedure, the debtor is limited to negotiating an extra-judicial restructuring plan with its creditors that is subject to final approval and confirmation by the court.

The second is the restructuring procedure (procedură de restructurare) which is designed to help a debtor avoid insolvent liquidation. This involves the drafting, approval, implementation and observance of a comprehensive plan of measures for the financial and economic rehabilitation of the debtor, as well as the repayment of its debts in accordance with a restructuring plan (Article 182).

Click here for a high-level overview of these reorganisation procedures.

Who can commence the process and what entry conditions apply?

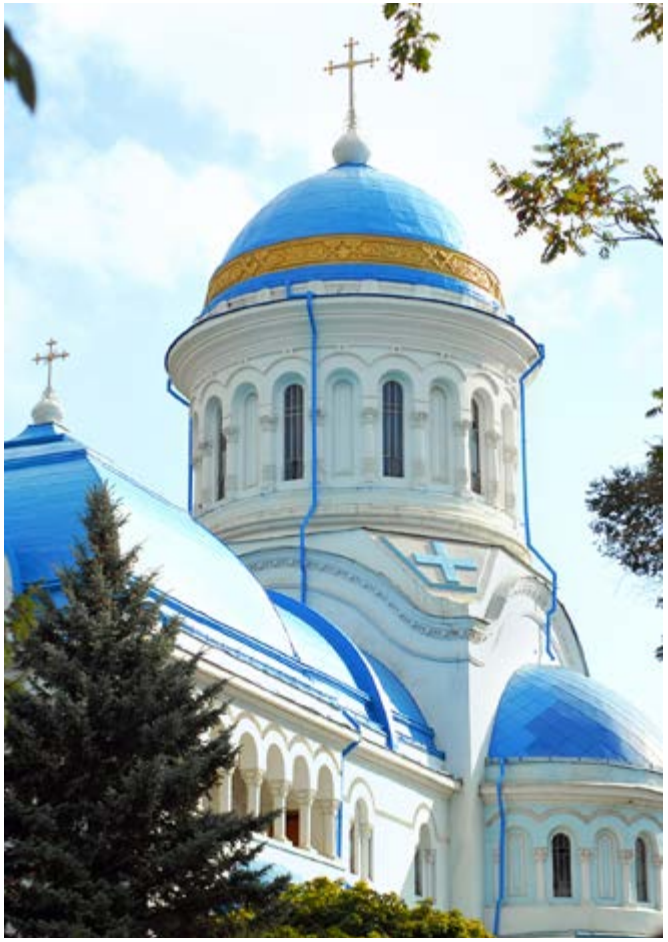
Accelerated restructuring procedure

This procedure can only be initiated by a debtor in financial distress. The petition must include the information stipulated in Article 16 of the Insolvency Law and must be accompanied by: the documents referred to in Article 17; proof that the classes of creditors affected by the plan have accepted the plan pursuant to the conditions set out by Article 202 (3); proof that creditors who are not affected by the plan are to be paid in the ordinary course of the debtor's business; and a draft plan of the accelerated restructuring procedure, indicating the classes of creditors that are affected by the plan.

Restructuring procedure

There is one gateway into general insolvency proceedings, which can result either in restructuring or liquidation of the debtor's business. General insolvency proceedings can be initiated by either the debtor or any of its creditors, including the Moldovan tax authority, where the debtor is either cash flow insolvent or balance sheet insolvent (Articles 10 and 12).

However, only the debtor can initiate the procedure where a threat of insolvency exists (the likely impossibility of paying in full the claims of any creditors at their maturity) or where, in the case of the liquidation of the debtor, it is clear that the debtor will be unable to fully satisfy the claims of its creditors. To start the insolvency proceedings, the interested person (the debtor, creditor or Moldovan tax authority) shall submit the insolvency petition to the competent insolvency court.



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?

Yes, the accelerated restructuring procedure and the restructuring procedure are overseen by the insolvency court. However, the accelerated restructuring procedure has an out-of-court element. It allows the debtor to negotiate privately the terms of a restructuring plan with selected creditors, with the benefit of a two-month moratorium, and to present the agreed plan to the court.

Are there any hybrid reorganisation procedures?

Yes, the accelerated restructuring procedure is considered a hybrid procedure as it allows for extrajudicial negotiations and agreement of the plan. Following negotiations and agreement of the plan, the debtor has to submit an application to commence the procedure, attaching the restructuring plan and proof of its acceptance by the creditors (Articles 219 to 220). This leads directly either to confirmation or rejection of the plan by the court.

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

Accelerated restructuring procedure

Yes, the debtor remains in possession but the court shall appoint an insolvency practitioner to supervise the debtor‘s operations (Article 220 (4)).

Restructuring procedure

It depends on the court’s ruling. The court decides whether the debtor should remain in possession of the company and continue to carry on its business operations, under the oversight or management of the insolvency practitioner named by the insolvency court (Articles 210 to 212). The court is required to take all necessary measures to prevent a change in the state of the debtor’s property during the period before commencement of insolvency proceedings. This means that during the observation period a debtor may continue its activities and make payments to known creditors in the ordinary course of business subject to the oversight of an insolvency practitioner. In cases where the creditors or the insolvency practitioner so request and there are justifiable grounds, the court may replace management of the debtor with the insolvency practitioner (Articles 23 and 24 (2) (a)).

Is there a need to appoint an insolvency practitioner?

Accelerated restructuring procedure

The court appoints a temporary insolvency practitioner to supervise the debtor’s management of its business operations (Article 220 (4)). The meeting of creditors decides on appointment of a permanent insolvency practitioner to supervise implementation of the restructuring plan at the same time as voting on the restructuring plan (Articles 223 (3) (c) and 225 (2)).

Restructuring procedure

During the observation period following initiation of general insolvency proceedings, the insolvency court may appoint a temporary insolvency practitioner to supervise the debtor’s management of its operations (Article 21 (5)). At the justifiable request of the creditors, the court may displace management of the debtor (Article 23 (5)). After the court appoints the temporary insolvency practitioner, the creditors may propose another insolvency practitioner at the first creditors’ meeting, convened after the claim’s approval meeting. The insolvency practitioner takes office on the date of approval of his/her appointment by the court and performs any activities for the whole period of the restructuring procedure and implementation of the restructuring plan or until earlier release by the court (Articles 34 (3), 71 and 186).

The insolvency practitioner may also hire specialists or legal advisors to provide assistance in relation to the insolvency case (Articles 25 (7), 68 (4)). In order that associated costs may be covered from the debtor’s estate. The appointment of specialists and the amount of their remuneration is subject to approval by the court examining the insolvency case during the initial ‘observation’ period of proceedings or the committee of creditors after commencement of the insolvency procedure.

Is there any applicable stay or moratorium?

Accelerated restructuring plan

A stay or moratorium is available at the debtor’s request. The debtor is required to notify the court of any negotiations for an accelerated extrajudicial restructuring plan and may request a moratorium to suspend the enforceability of any judgments pertaining to the debtor’s assets during the negotiation period, for up to two months.

Restructuring procedure

Yes, a general, time-bound moratorium on enforcement arises on initiation of any insolvency proceedings (Article 81). If the insolvency court initiates a restructuring procedure, the moratorium immediately applies with respect to all monetary obligations existing on the date of the restructuring procedure, except for any claims relating to salaries, spousal support or maintenance payments or compensation related to damage to employees’ health, or claims related to their deaths (Article 184).

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

Yes, with respect to both the accelerated restructuring plan and the restructuring procedure. Any public service provider with a dominant market position (electricity, gas supply, water supply, telephone services or similar) shall not have the right to unilaterally terminate the contract due to the initiation of insolvency proceedings (Articles 23 (4), 91 (3) and 97 (1)). Reduction or termination of services is only permitted in the case of non-payment by the debtor or the insolvency practitioner. A similar restriction on termination of these essential contracts applies during the period of implementation of the restructuring plan (Article 213). Furthermore, there are restrictions on terminations by third parties of any property lease or rental contract in which the debtor is a tenant or lessee.

Pursuant to Article 89 (3) of the Insolvency Law, ipso facto provisions are prohibited. Any clause that would provide for termination of the agreement due to declaring the debtor insolvent should be deemed void, except where the law provides otherwise (such as in the case of credit financing agreements, pursuant to Article 1769 (1) of the Civil Code).

Is new financing protected by law?

Yes, new financing or post-commencement financing in both the restructuring procedure and the accelerated restructuring procedure shall be approved by the insolvency practitioner and qualifies as expenses of the proceedings with priority over other debts. If the financing exceeds a certain value (between 10% and 50% of the insolvency estate based on the last financial assessment report), the financing must be approved by the creditors' committee (Articles 52 (2) (c) and 69 (3)).

The insolvency practitioner may provide a first- or other-ranking pledge over any unsecured assets or a lower-ranking pledge over any existing secured assets of the insolvency estate as security for new financing. A first-ranking pledge may be provided in favour of a new lender over existing secured assets only if the secured creditors agree to waive their priority ranking.

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

Accelerated restructuring procedure

Yes, as for the restructuring procedure, subject to different rules governing the meeting of creditors to vote on the accelerated restructuring plan (Article 223).

Restructuring procedure

Yes, if the creditors are given different legal treatment, they shall be grouped into the following classes: secured creditors; unsecured creditors with priority claims; unsecured creditors, with the exception of creditors of the last priority; and unsecured creditors of the last priority (Article 191).

Priority claims are defined under Article 43 and include claims for payment of salaries to employees, and claims for credits granted by the Ministry of Finance. Unsecured creditors of the last priority include interest on unsecured creditors' claims calculated after the initiation of insolvency proceedings, fines, penalties and other financial (monetary) sanctions, including those related to breach of contract.

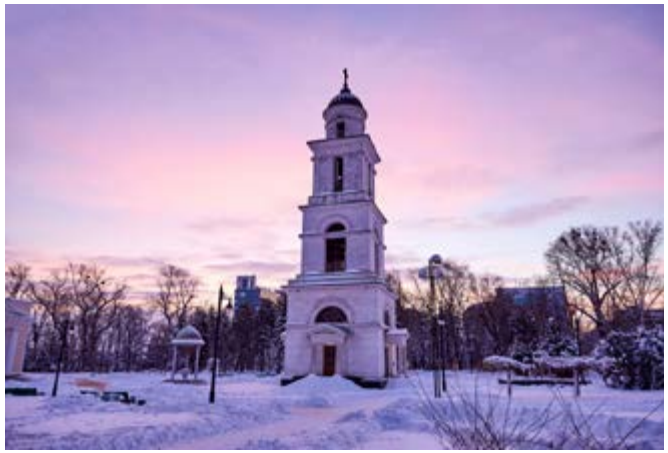
The restructuring plan must provide the same treatment of each claim within the same category, unless the holder of the claim of the relevant class consents to the application of less favourable treatment in respect of its claim. Unless otherwise stipulated in the plan, the rights of secured creditors to enforce their claims at the expense of the property covered by their guarantees may not be compromised (Article 193).

What are the majorities required to approve a reorganisation plan?

Both restructuring procedure and accelerated restructuring procedure have the same requirements as to the majorities required to approve a reorganisation plan.

A plan is considered to be accepted by a class of creditors where creditors representing more than half of the value of the claims of that class vote in favour of the plan. A plan may also be deemed adopted by a non-consenting class of creditors, if creditors of such class are not put in a less favourable position by the adoption of the plan compared to the situation in which they would have been without a plan; and a majority of the voting classes of creditors have voted in favour of the plan.

The plan shall be approved by the court (Article 204) if at least half plus one of the classes of creditors have accepted the plan or are deemed to have accepted it or, where there are only two classes of creditors, the plan is deemed to be accepted if it is accepted by the class with the largest total amount of claims. Each class of creditors whose claims are in a less favourable position and that reject the plan must also receive fair and equitable treatment.



Fair and equitable treatment means that any dissenting class of creditors with respect to their claims receives no less than it would have received in the event of an insolvent liquidation; any class of creditors with respect to their claims receives no more than the value of the claims; and if a disadvantaged affected class of creditors rejects the plan, any dissenting class of creditors with claims of an inferior rank to the dissenting affected class receives no more than it would have received in the event of an insolvent liquidation. Affected creditors are any creditors whose claim is somehow disadvantaged (i.e. payment postponed, the amount of claim is decreased etc.).

The insolvency court may not approve the decision of the meeting of creditors and the restructuring plan if the requisite majorities have not been met or if there is a material breach with respect to the content of the plan or the manner of its implementation or its treatment of creditors, or where the plan contains fictitious data or manifest errors or the insolvency practitioners and any specialists have not been paid.

Who does the reorganisation plan bind?

Accelerated restructuring procedure

The debtor and all the creditors included in the plan, including all creditors who did not vote or voted against the plan. Any creditor whose rights are unaffected by the restructuring plan shall continue to receive payments in the ordinary course of business (Article 224 (2) (b)).

Restructuring procedure

The debtor and all creditors who are included in the plan. However, unless otherwise stipulated during the restructuring procedure, the rights of secured creditors cannot be compromised.

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

Accelerated restructuring procedure

There is no specific timeframe for the duration of the procedure, but the law provides for time periods in which various measures need to be completed (e.g. two months for the debtor's negotiations with the creditors, 30 days for the submission of the statements of defence and approximately two months for a creditors' meeting on the approval of the restructuring plan).

The debtor can benefit from a moratorium of a maximum of two months during any extrajudicial negotiations on the plan (Article 219 (1)). The implementation of the restructuring plan shall not exceed three years starting from approval of the plan by the court. In exceptional circumstances, this period may be extended once for a maximum period of two years (Article 224 (8)).

Restructuring procedure

There is no specific timeframe for the duration of the procedure, but the law provides for time periods in which various measures need to be completed. If creditors decide to initiate the restructuring procedure, the court sets a time limit (not exceeding 30 days) in which the debtor, the insolvency practitioner and/or creditors are required to propose a restructuring plan (Article 114). If more than one party intends to present a plan, the court shall set a maximum period within which each party can present a plan to be voted on at the same meeting of creditors (Article 188).

After a plan has been submitted, but not later than five days after the expiry of the time limit for its submission, the party that proposed the plan shall publish an announcement to convene a meeting of creditors to consider and vote on the plan (Article 199).

The moratorium is in force from the moment the court approves the decision of the creditors to start the restructuring procedure and continues for the duration of the entire restructuring procedure, with some exceptions for secured creditors and payment of wages (Article 184).

The same timeframe of three years starting from approval of the plan by the court, extendable once for a maximum period of two years applies to the restructuring plan as for the accelerated restructuring plan (Article 224 (8)).

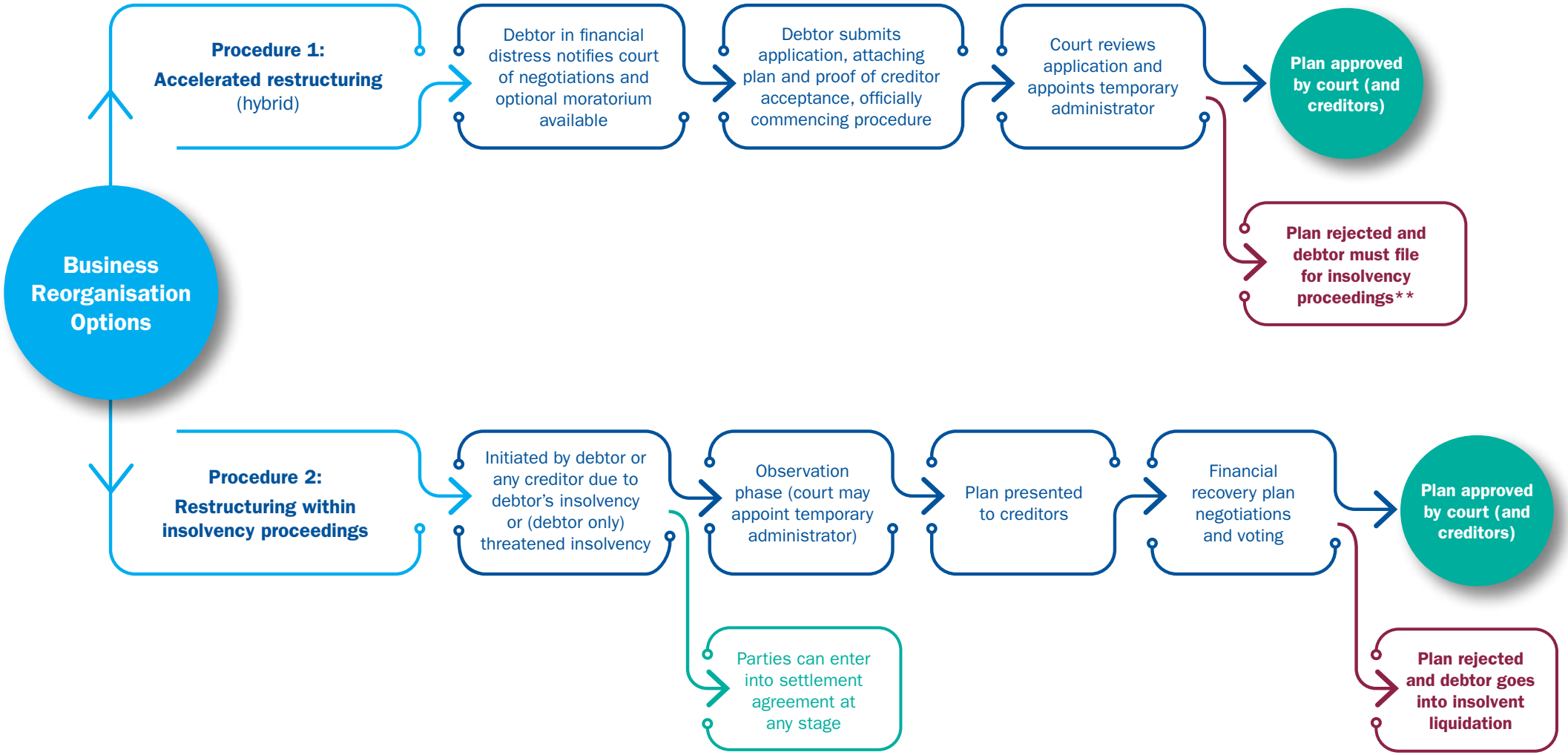
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, the UNCITRAL Model Law has not been adopted. If a case on insolvency is initiated abroad and the debtor has assets in the territory of the Republic of Moldova enforcement against such assets could be performed based on a bilateral treaty on cross-border insolvency between Moldova and the related country (Article 252).

Special features/observations:

- Moldova is one of a small number of economies where we invest which has a hybrid, accelerated reorganisation procedure. Out-of-court negotiations are supported by an optional moratorium available at the debtor's request.
- Moldova also has cross-class creditor cram down provisions in both reorganisation procedures to facilitate agreement on a reorganisation plan.
- The insolvency framework is being modernised to introduce an electronic registry of insolvency cases which, as of publication, is still under development.

Overview of Moldovan 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.

**Insolvency proceedings include option of procedure 2

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