

Business Reorganisation Assessment

📍 Mongolia



European Bank
for Reconstruction and Development



Special thanks to:

KhanLex Partners LLP

Judge Nyamdoo Bayarmaa

Part A

General Information

Macro Data

3,355	+5%	US\$ 4,170	₮ Mongolian tögrög – MNT	25% or 10%	5.4% (2019)	6.8% (2020)
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 **Insolvency Law** adopted on 20 November 1997 (the Insolvency Law) governs the insolvency of legal entities in Mongolia. In addition, the **Civil Procedure Code**, the **Civil Code** and the **Company Law** contain general rules and provisions related to the conduct of insolvency proceedings in courts and the liquidation of companies. There are no further ministerial decrees or legislative acts in this regard. The Mongolian authorities are in the process of considering a new draft legislative framework which is expected to replace the existing Insolvency Law. An unofficial translation in English of the Insolvency Law is available **here**.

Insolvency Data

Insolvency data is not publicly available. However, the Insolvency Law requires the publication of the decision on opening insolvency proceedings not more than five days after the issuing date of the relevant court order. Courts usually publish notices in daily newspapers.

Company Information

Incorporation and registration of companies is governed by the **Company Law**. The Mongolian company register is called the General Authority for State Registration of Mongolia. Publicly available information on registered companies in Mongolia is limited, e.g. to information such as company name, address, direct shareholder(s) and authorised representative (usually a Chief Executive Officer or managing director).

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency cases are handled by courts of general civil jurisdiction. The main government authority in charge of insolvency is the Ministry of Justice. Jurisdiction of the court is based on the location of the debtor. Insolvency practitioners are not required to have any special authority to act, such as a registration or licence. Insolvency practitioners must be either individuals with a degree in law, finance or economics, who do not have financial and economic personal interests in the debtor's activities, or legal entities with the rights and responsibilities to provide professional consulting services in the field of law, finance or economics.



¹ IMF- Source as from April 2021: www.imf.org/en/Countries/MNG

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

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Part B

Business Reorganisation

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

No, there are no incentives for extrajudicial voluntary agreements.

What is the nature and purpose of the reorganisation procedure?

There is only one reorganisation procedure known as 'rehabilitation' (дахин хөрөнгөжүүлэх) under the Insolvency Law. **Click here** for a high-level overview of this procedure.

The procedure is accessed through the commencement of general insolvency proceedings which can lead to either liquidation or to reorganisation of the debtor (Article 1). The purpose of rehabilitation is to provide an opportunity for the debtor to continue running its business and to satisfy more effectively the creditors' claims compared to liquidation (Article 23.1).

Who can commence the process and what entry conditions apply?

Both the debtor and its creditors (being parties that have a right to demand fulfilment by the debtor of its obligations) can petition for the opening of insolvency proceedings where the debtor is insolvent (Article 5). In the case of the debtor, a petition for insolvency must be accompanied by description, supported by evidence, of the grounds for considering the debtor insolvent and proposals for either rehabilitation or liquidation of the debtor (Article 7). A debtor shall be considered insolvent when it is unable to fulfil its obligations in an amount equal to or higher than 10 per cent of its equity by the deadline specified by law or contract (Article 4.1).

A debtor, creditors which represent one-third or more of total claims, and an insolvency practitioner may submit a request for rehabilitation of the debtor within 60 days of the date on which the debtor was declared insolvent (bankrupt) (Article 23).

Is there any court involvement?

Yes, the reorganisation procedure is a fully court-supervised procedure.

Are there any hybrid reorganisation procedures?

No, there are no hybrid reorganisations procedures.

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

This is a matter for the court's discretion. However, the debtor loses possession to an insolvency practitioner if it fails to submit a request for rehabilitation and the rehabilitation plan by the deadline specified in the Insolvency Law (Article 14.1). The scope of any management powers of the insolvency practitioner is determined by the creditors' meeting.



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 a need to appoint an insolvency practitioner?

Yes, the court appoints an insolvency practitioner to manage the liquidation or the rehabilitation of the debtor. The court may appoint a temporary insolvency practitioner when it commences insolvency proceedings (Article 5.7). Within 30 days of the public announcement of the debtor's insolvency, there is a meet creditors' meeting, which is charged with proposing a (permanent) insolvency practitioner to the court (Article 8.2) and any conditions and limits to the insolvency practitioner's management powers where the court removes the right of the debtor's management to manage the business.

An insolvency practitioner is not a regulated individual or entity. However, the Insolvency Law requires the practitioner to be an individual with a degree in law, finance or economics, who does not have financial and economic personal interests in the debtor's activities, or a legal entity which has the rights and responsibilities to provide professional consulting services in the field of law, finance or economics (Article 11.2). Among the rights and responsibilities of the insolvency practitioner are: placing the debtor's assets under seal, safeguarding and making an inventory of the debtor's assets; examining contracts and transactions concluded by the debtor and concluding contracts on behalf of the debtor in accordance with the rights granted by the creditors' meeting (Article 12). The insolvency practitioner is responsible for submitting an evaluation report on the debtor to the court, which should contain among other matters an analysis of the debtor's insolvency (Article 13).

Any approved rehabilitation plan must be implemented under the supervision of an insolvency practitioner (Article 29).

Is there any applicable stay or moratorium?

Yes, from commencement of insolvency proceedings, the debtor benefits from a moratorium suspending creditors' enforcement actions, including secured creditors (Article 21). The moratorium includes a prohibition on taking assets or making payments out of the debtor's assets according to a court order.

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

Yes, with respect to essential contracts there is some protection. Creditors cannot terminate or amend contracts that are 'related to ensuring the normal operation of the debtor' on the grounds of insolvency (Article 22).

Is new financing protected by law?

No, the Insolvency Law does not protect new financing required for the reorganisation. However, pursuant to Article 32.5.3 of the Civil Code, claims arising from contracts concluded in the process of rehabilitation of the debtor during its insolvency are to be satisfied before unsecured creditors, but after secured creditors.

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

Yes, each of the following classes of creditors should vote on the rehabilitation plan: secured creditors which have 10 per cent or more of the total amount claimed; other secured creditors which have less than 10 per cent of the total amount claimed; employees who have employment contracts with the debtor; and other classes (not specified by the law), such as unsecured creditors. Only those creditors whose claims have been accepted by the court have the right to participate in the voting to approve the plan (Article 27.3).



What are the majorities required to approve a reorganisation plan?

The rehabilitation plan needs to be approved by a majority of votes of creditors in each class (Article 27.4). Although the law does not provide further details, it seems that a simple majority of the creditors present at the voting in each class can be considered sufficient. However, the court's approval is conditional on at least one of the following two requirements being met: the plan is supported by at least two classes of creditors; or the creditors will receive more from a rehabilitated debtor than in a liquidation of the debtor (Article 28.2).

Therefore, the confirmation of the plan by the court is possible even if not all voting classes approve it. If two or more plans have been proposed, the creditors' meeting will discuss and collect votes for all proposed plans. If several plans receive the approval of creditors, the court should confirm the plan that was proposed by the debtor (Article 28.4).

Who does the reorganisation plan bind?

The rehabilitation plan binds all creditors that are part of the plan (Articles 27.4 and 28.2).

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

Within five days of the start of an insolvency case, the court will give a copy of the claim to the debtor and will determine within 30 days whether the debtor is insolvent or not (Article 5.3). The declaration of insolvency is the basis for other time periods set out in the Insolvency Law, including convening the creditors' meeting which takes place within 30 days of the date of the declaration. The creditors' meeting proposes an insolvency practitioner who prepares an evaluation report on the debtor within 20 days of approval of the insolvency practitioner by the court. A debtor, creditors which represent one third or more of total claims and an insolvency practitioner may submit a request for rehabilitation of the debtor within 60 days of the date on which the debtor was declared insolvent (bankrupt) (Article 23) and each of these parties may submit a rehabilitation plan to the court within 30 days of the date of the insolvency practitioner's evaluation report (Article 24.1).

The rehabilitation process must be completed within two years, but this period may be extended by the court by a maximum of six months (Articles 25 and 30.2). There is no specific timeframe for the moratorium and therefore the duration of the moratorium is equal to the duration of the procedure.

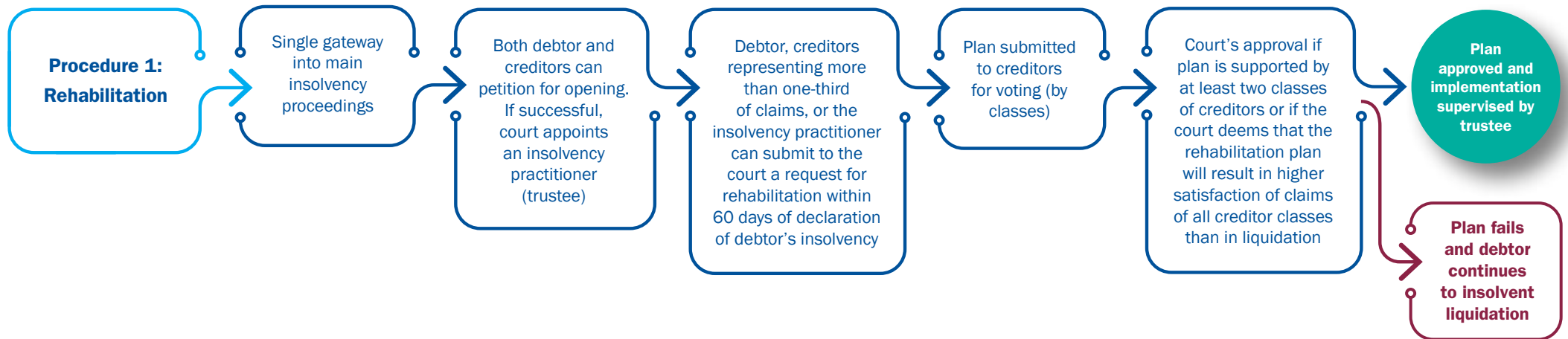
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, the UNCITRAL Model Law has not been adopted and there are no provisions in the legislation for the recognition of foreign insolvency proceedings or for cooperation with courts or insolvency practitioners from other jurisdictions.

Special features/observations:

- In 2021, the Parliament of Mongolia has approved a policy document entitled "the General Direction to Improve and Update the Laws and Regulations of Mongolia until 2024". The policy document proposes to revise the Insolvency Law, which was initially passed in 1997, among many other laws and regulations to be revised within 2021. A draft Insolvency Law, which will modernise Mongolia's insolvency framework, is under consultation.
- There is a concern over the lack of recognition of secured claims by Mongolian courts in some court proceedings. This issue has arisen in insolvency proceedings, as well as in civil law proceedings.

Overview of Mongolian 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.

** Court opens restructuring proceedings if legal person is in financial difficulties, i.e. insolvent, or there is a real probability that it will become insolvent in the next three months and the legal person is viable.

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