

# Business Reorganisation Assessment

📍 Romania



**European Bank**  
for Reconstruction and Development



## Special thanks to:

CITR  
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## Part A

# General Information

## Macro Data

19.381	6.0%	US\$ 14,970	lei Romanian leu – RON	16%	2.8%	4.9%
Population (million) <sup>1</sup>	GDP growth rate <sup>1</sup>	GDP per capita <sup>1</sup>	Currency	Corporate tax rate <sup>2</sup>	Inflation rate <sup>1</sup>	Unemployment rate <sup>1</sup>

## Insolvency Legislation

The primary legislative act governing insolvency and restructuring of companies and entrepreneurs (professionals excluding those practising liberal professions) in Romania is the **Law on Insolvency Prevention and Insolvency Proceedings** (the Insolvency Law) (Official Bulletin No. 466) adopted on 25 June 2014. The Code of Civil Procedure contains certain provisions with respect to procedural issues relevant for insolvency proceedings. In addition to the Insolvency Law, provisions relating to insolvency practitioners are found in **the Emergency Governmental Ordinance 86/2006 on the Organisation of Activity of Insolvency Practitioners** effective from 22 November 2006 (as amended).

In April 2021, the Ministry of Justice of Romania launched a public consultation of a new draft Law No. 85/2014 for transposing **EU Directive 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. The draft law is the result of a project led by the Ministry of Justice of Romania and funded by the EU through the Structural Reform Support Programme (SRSP).

## Insolvency Data

Information regarding the registration and identification of natural persons and legal entities that filed for insolvency is maintained by the Official National Trade Register Office (Oficiul National al Registrului Comertului) under the Ministry of Justice. This register is connected to the Bulletin of Insolvency Proceedings (Buletinul Procedurilor de Insolventa), and is available online **here**. The Bulletin of Insolvency Proceedings publishes court summons, notices and communications of

procedural documents by the courts and court-appointed insolvency practitioners after the opening of insolvency proceedings, as well as notifications of other acts which must be published according to the Insolvency Law.

Annual submissions/proceedings related to the Insolvency Law may be accessed online on the website of the **Official National Trade Register Office** (Oficiul National al Registrului Comertului). According to available statistics, in 2020, 5,694 new insolvency proceedings were initiated and in 2021 (until end of June), 3,076 new insolvency proceedings were initiated. As of 1 August 2021 22,977 companies were in some form of insolvency procedure. Of this number, 16,543 (72 per cent) of companies were in insolvent liquidation (bankruptcy). The rest of the companies, i.e. 6,434, were in the initial observation period following opening of insolvency proceedings or in a reorganisation procedure.

There is no available data for the mandate ad hoc procedure as this is confidential.

<sup>1</sup> IMF – Source as of August 2021:  
[www.imf.org/en/Countries/ROU](http://www.imf.org/en/Countries/ROU)

<sup>2</sup> PWC – Source as of August 2021:  
[taxsummaries.pwc.com/romania/corporate/taxes-on-corporate-income](http://taxsummaries.pwc.com/romania/corporate/taxes-on-corporate-income)

<sup>3</sup> For more information, see: [www.just.ro/en/ministerul-justitiei-si-comisia-europeana-vin-in-sprrijinul-afacerilor-in-dificultate-lansarea-proiectului-european-pentru-transpunerea-directivei-restructurare/](http://www.just.ro/en/ministerul-justitiei-si-comisia-europeana-vin-in-sprrijinul-afacerilor-in-dificultate-lansarea-proiectului-european-pentru-transpunerea-directivei-restructurare/)

## Company Information

The Romanian law framework for companies (other than banks) is governed by the **Companies Law No. 31/1990**, the **Law No. 26/1990 on the Trade Registry**, the **Emergency Ordinance No. 44/2008** and the **Civil Code**. Information about companies is contained in the Companies Register maintained by the Official National Trade Office, under the Ministry of Justice. The register is available online and can be accessed by any interested person **here**. Limited information is available free of charge, e.g. whether

the company is in insolvency proceedings. Other information is available subject to payment of a fee, e.g. regarding the identity of the company's shareholders or directors.

The record of a company will include a reference to such company having entered into insolvency proceedings where applicable. Information regarding whether a company is in insolvency proceedings is also available in the Bulletin of Insolvency Proceedings.

## Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency proceedings fall within the competence and exclusive jurisdiction of commercial district courts. As a general rule, the jurisdiction of the court is determined on the basis of the registered office of the debtor or professional establishment in the case of entrepreneurs, as at the date of submission of the petition for commencement of insolvency proceedings.

Authorities involved in insolvency proceedings are the Ministry of Justice and relevant tax authorities. The Official National Trade Office under the Ministry of Justice is the competent authority for amendments to secondary legislation with respect to insolvency proceedings.

Insolvency practitioners (known as judicial administrators and judicial liquidators) must be enrolled in a register administered by the Ministry of Justice. In order to be listed in the register, certain requirements, such as an entry examination and practical experience, must be met. The purpose of the registration process is to guarantee high professional standards. Ad hoc agents appointed during the preventive mandate ad hoc procedure are appointed from the list of insolvency practitioners. The register of insolvency practitioners is available on the website of UNPIR, the self-governing association of insolvency practitioners: **[www.unpir.ro/tablou](http://www.unpir.ro/tablou)**.



Continue to Part B →

## Part B

# Business Reorganisation

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

While recognised by law, there are no specific incentives for extrajudicial voluntary agreements. However, the mandate ad hoc (ad hoc mandat) and preventive composition (concordat preventiv) procedures enable a business in distress which is not yet technically insolvent to reorganise its liabilities with limited court involvement.

### What is the nature and purpose of the reorganisation procedure?

The Insolvency Law is clearly oriented towards ensuring the continuation of the debtor as a going concern. Article 4 sets out certain key principles that govern the procedures including: effective and efficient recovery of the business, either through the insolvency prevention procedures or court-supervised administration; ensuring access to sources of financing in insolvency prevention procedures during the observation and reorganisation periods, with the creation of an appropriate regime for the protection of such claims; and promoting the negotiation and settlement of claims and the conclusion of an arrangement with creditors.

Under the Insolvency Law there are two reorganisation procedures: mandate ad hoc and preventive composition, which are of a preventive nature. There is a further judicial reorganisation procedure within the general insolvency procedure. **Click here** for an overview of these procedures.

### Mandate ad hoc procedure

This procedure is a light-touch preventive insolvency procedure. It is triggered at the request of the debtor and involves the appointment of an ad hoc agent by the court to negotiate an arrangement with the debtor and one or more creditors with a view to overcoming the debtor's financial difficulties (Article 5) within 90 days from designation of the agent by the debtor (Article 13 (2)). The procedure is confidential and its confidentiality is mandatory for all persons and institutions involved (Article 12 (3)).

### Preventive composition procedure

The aim of this procedure is the conclusion of a contract between a debtor in financial difficulties, i.e. which is not yet insolvent, and creditors holding at least 75 per cent of the sum of accepted and uncontested claim endorsed by the court. The contract is based on a plan for the debtor's financial recovery and realisation of creditors' claims (Article 5). A debtor in financial difficulty is a debtor that has limited short-term liquidity and/or a long-term debt level that may affect the fulfilment of its contractual obligations (Article 5).

### Judicial reorganisation procedure

This is a court-supervised procedure which applies only to insolvent debtors that are legal entities. The procedure involves drafting, confirming and implementing a plan, known as the reorganisation plan, which may provide, together or separately and without limitations, for: operational and/or financial restructuring of the debtor; corporate restructuring by modification of the registered capital structure; and restriction of activity through partial or full liquidation of the debtor's assets (Article 5).



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**

## Who can commence the process and what entry conditions apply?

### **Mandate ad hoc procedure**

This procedure may only be commenced by a debtor in financial difficulties, whether a company or entrepreneur (professional), which is not yet insolvent. The debtor must apply to the President of the court for the appointment of an ad hoc agent and include in its application a detailed explanation as to why such appointment is necessary (Article 10). The President will commence the procedure where satisfied that the financial difficulties of the debtor are real and the ad hoc agent meets all legal requirements (Article 13 (1)).

### **Preventive composition procedure**

This procedure is available for any debtor in financial difficulty, whether a company or entrepreneur (professional), subject to certain exclusions, and can only be initiated by the debtor. Exclusions include where in the three years prior to the application for preventive composition, the debtor had an arrangement with creditors which failed, and where the debtor, its managing bodies or its directors have been convicted of certain types of crimes (Article 16).



### **Judicial reorganisation procedure**

To initiate this procedure, the debtor or any interested creditor must petition for the opening of general insolvency proceedings. A petition for insolvency may be submitted by the debtor through its representative bodies or by any interested creditor. The debtor must be insolvent, i.e. have insufficient available cash for the payment of certain, liquid and payable debts. Insolvency is presumed where the debtor has not paid its debts to its creditor(s) after 60 days from the due date of such debts. A creditor is entitled to apply for insolvency proceedings where its claim on the debtor's assets is certain (of a fixed amount) and due for more than 60 days. Both the debtor and the creditor must satisfy the minimum threshold amount of RON 50,000 (approx. €10,000) to apply to open general insolvency proceedings (Article 5). Further procedural requirements are set out in Articles 67 and 68 for the debtor and in Article 70 for creditors.

In certain cases, the court may decide to oblige the petitioning creditor to pay a form of "deposit security" of up to 10 per cent of the value of the debt, but not exceeding RON 40,000 (approx. €8,000), in order to cover any damages incurred by the debtor in case of an urgent petition by a creditor requesting interim measures, e.g. where an injunction against the debtor is without merit. The debtor can challenge the insolvency petition filed by the creditor and prove that it has enough liquidity to meet its payment obligations (Article 72).

The reorganisation plan can be proposed within the insolvency proceedings by the debtor following approval of its shareholders or associates' general meeting, the insolvency practitioner, or creditors owning at least 20 per cent of the total registered claims (Article 132). The reorganisation plan should provide some minimum mandatory information regarding how the debtor will restructure its activities and how it will pay the debts (Article 8).

## Is there any court involvement?

Yes, the court is involved in the mandate ad hoc, preventive composition and judicial reorganisation procedures, however its involvement is more limited in both mandate ad hoc and preventive composition.

## Are there any hybrid reorganisation procedures?

The mandate ad hoc and preventive composition procedures are hybrid procedures in that negotiations and approval and voting by creditors on an agreement are conducted out-of-court.

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

### **Mandate ad hoc procedure**

Yes, the debtor remains in possession. The appointment of an ad hoc agent is to facilitate an agreement between the debtor and its creditors. The ad hoc agent does not supervise the debtor or assume any management powers with respect to the debtor's business.

### **Preventive composition procedure**

Yes, the debtor stays in possession under the supervision of the insolvency practitioner (the composition administrator) (Article 33). The debtor can carry on the activities within the ordinary course of business, subject to the oversight of the practitioner.

### **Judicial reorganisation procedure**

Yes, during the procedure the special administrator will manage the operations of the debtor, under the supervision of the judicial administrator (Article 141). Shareholders do not have the right to intervene in the conduct of the business or management of the debtor, with the exception and limited to the specific and exhaustive cases laid down by law and the reorganisation plan.



## Is there a need to appoint an insolvency practitioner?

### **Mandate ad hoc procedure**

Yes, an ad hoc agent is appointed by the court from the list of authorised insolvency practitioners to support the debtor in reaching an agreement with its creditors. The debtor may propose in its application to the president of the court the person to be appointed from the list (Article 10).

### **Preventive composition procedure**

Yes, the court appoints a provisional insolvency practitioner (composition administrator), who can be replaced by the decision of the creditors' meeting (Articles 17 and 24 (6)). The composition administrator's tasks include preparing the list of creditors together with the debtor, drafting an offer of a preventive composition jointly with the debtor, and resolving amicably any dispute between the debtor and creditors or between creditors (Articles 19 and 23 (3)).

### **Judicial reorganisation procedure**

Yes, the court appoints of its own initiative or at the debtor's or creditors' proposal an insolvency practitioner (judicial administrator) to oversee the insolvency procedure. The judicial administrator's tasks include examining the economic situation of the debtor, preparing a detailed report on the causes and circumstances that led to the insolvency including whether there is a real possibility of achieving a reorganisation, and (where applicable) preparing a reorganisation plan for the debtor (Article 58).

In addition, a special administrator (either a natural or legal person, i.e. not an insolvency practitioner) may be appointed by the general meeting of the shareholders/associates/members of the debtor, who is empowered to represent their interests in the proceedings and, when the debtor is allowed to manage his affairs, to carry out, on his behalf, the necessary acts of administration.

Following confirmation of a reorganisation plan, the debtor is supervised by an insolvency practitioner and in accordance with the confirmed plan, until the judge closes the procedure or terminates it and orders the opening of insolvent liquidation (bankruptcy) proceedings. During the procedure, the debtor is managed by a special administrator, under the supervision of the insolvency practitioner (Article 141 (1)).

## Is there any applicable stay or moratorium?

### **Mandate ad hoc procedure**

No, since this is a voluntary procedure. The confidentiality of the procedure limits to a certain extent the need for a general stay or moratorium.

### **Preventive composition procedure**

Yes, however it is not automatic. The debtor may request the judge for a temporary suspension of any individual proceedings on the basis of a plan for preventive composition, which shall remain in place until an enforceable decision to endorse the composition has been delivered by the court or the creditors have rejected it (Article 25). Once a composition plan is approved, during the implementation period, insolvency proceedings cannot be commenced against the debtor (Article 31). Any creditor which obtains an enforcement order against the debtor during the procedure may request to join the composition plan or may recover its claim by any other means provided for by law, e.g. enforcement (Article 32). This means that the creditor can negotiate with the debtor how to recover its debt or even how to proceed with an enforcement action.

### **Judicial reorganisation procedure**

Yes, all in-court and out-of-court actions and any measures for the forced recovery of claims against the debtor's assets are suspended from the opening of insolvency proceedings by the court (Article 75). There are, however, a number of carve-outs from the moratorium, including civil lawsuits joined to criminal prosecutions against the debtor and judicial proceedings against any co-debtors and/or third-party guarantors, which may continue.

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

### **Mandate ad hoc and preventive composition procedures**

No, there are no protections under either procedure for contracts that are essential for the continuation of the debtor's day-to-day operations and no overall ban on contractual termination clauses triggered by the debtor's entry into either of these procedures.

### **Judicial reorganisation procedure**

Yes, for both essential contracts and contractual termination clauses. A supplier of essential services, such as electricity, gas, water, telephone or other similar services, cannot change, refuse or temporarily interrupt such services to the debtor during the initial observation period following the opening of insolvency proceedings or during the judicial reorganisation procedure (Article 77 (1)). Furthermore, any clause in a contract providing for termination of the contract on grounds of the opening of insolvency proceedings is null and void (Article 123).

## Is new financing protected by law?

### **Mandate ad hoc procedure**

No, there are no provisions protecting new financing provided by a creditor during the mandate ad hoc negotiations or under the agreement negotiated by the ad hoc agent.

### **Preventive composition procedure**

Not expressly. However, the composition plan may foresee the provision of new financing to allow the debtor to overcome a state of financial difficulty. In this case, the draft preventive composition should specify the priority of repayment of any new financing after the payment of the costs for the proceeding (Article 24 (2) (b)).



### **Judicial reorganisation procedure**

Yes, any funding granted to the debtor during the observation period for the purposes of maintaining current activities which has been approved by the meeting of creditors is expressly given priority in repayment (Article 87 (4)). The reorganisation plan is also required to specify appropriate measures for its implementation, including obtaining financial resources and any financing to be given priority in a subsequent insolvent liquidation and winding up (Article 133 (5)).

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

### **Mandate ad hoc procedure**

No, there are no separate classes of creditors. A mandate ad hoc agreement is reached by consensus with participating creditors.

### **Preventive composition procedure**

No, the procedure does not provide for different classes of creditors for voting purposes and creditors vote as one group by

correspondence on the plan, including any amendments agreed in negotiations. In exceptional circumstances, the insolvency practitioner may convene a creditors' meeting (Article 22).

### **Judicial reorganisation procedure**

Yes, there are five recognised classes of creditors which may vote on the reorganisation plan: secured creditors; employee salary claims; creditors with public claims or state creditors which are mainly tax-related; unsecured creditors; and indispensable creditors, which consist of unsecured creditors providing services, raw materials, materials or utilities necessary for the activity of the debtor (Articles 5 (23) and 138).

Secured creditors are usually satisfied in full unless the value of the receivables is not covered by the value of the secured assets, in which case each creditor will become an unsecured creditor for the remaining amount of its receivable. For the reorganisation plan to be valid, it should identify the disadvantaged classes of creditors and the treatment of such classes (Article 14).

## What are the majorities required to approve a reorganisation plan?

### **Mandate ad hoc procedure**

No, there are no majority voting provisions. A mandate ad hoc agreement is reached by consensus with participating creditors.

### **Preventive composition procedure**

The preventive composition plan is considered to be approved by creditors if creditors representing at least 75 per cent of the sum of the accepted and uncontested claims vote in favour of it (Article 27 (5)). Creditors which control, are controlled by or, are under common control with the debtor, directly or indirectly, may attend the meeting but may vote with regard to the composition only if they would receive less than in the event of insolvent liquidation (bankruptcy).

Following the approval of the preventive composition plan by voting, the insolvency practitioner forwards the plan to court for its approval. The court approves the plan if the following conditions are met: the sum of the contested claims and/or claims in dispute does not exceed 25 per cent of the overall body of claims; and the plan has been approved by the requisite majority (see above) (Article 28).

### **Judicial reorganisation procedure**

A plan shall be considered accepted by a class if it is accepted by an absolute majority of the value of the claims of such class. Creditors which control, are controlled or are under common control with the debtor, directly or indirectly, may attend the meeting but may vote with regard to the plan only if they would receive less than in the event of bankruptcy.

Once approved, the plan shall be confirmed by the court, which may require a professional to express an opinion on the possibility of carrying out the plan before confirming it. Majority approval depends on the number of classes as follows:

- where there are five classes, the plan is deemed to be accepted if at least three classes accept the plan, provided that at least one of the disadvantaged classes accepts the plan and creditors representing at least 30 per cent of the total value of the insolvency estate accept the plan;
- if there are three classes, the plan is deemed to be accepted if at least two classes accept the plan, provided that one of the disadvantaged classes accepts the plan and creditors representing at least 30 per cent of the total value of the insolvency estate accept the plan;
- if there are two or four classes, the plan is deemed to be accepted if at least half of the number of classes voted in favour, provided that one of the disadvantaged classes accepts the plan and creditors representing at least 30 per cent of the total value of the insolvency estate accept the plan (Article 139).

Each of the disadvantaged classes of claims which has rejected the plan must be subject to fair and equitable treatment through the plan. A disadvantaged class is a class for which the reorganisation plan provides at least one of the following: a reduction in the amount of the claim to which the creditor is entitled and/or a reduction in guarantees or rescheduling of payments to the detriment of the creditor, without its express agreement. Fair and equitable treatment exists where, among other matters, none of the classes rejecting the plan or any claim that rejects the plan receive less than they would have received in the event of liquidation.

## Who does the reorganisation plan bind?

### **Mandate ad hoc procedure**

The agreement in the procedure is based on contract law and binds only those creditors which are signatories.

### **Preventive composition procedure**

The composition plan binds all creditors which have signed the agreement.

The claims of creditors (other than creditors under a qualified financial contract or bilateral netting transactions) which have not signed the preventive composition plan, including those creditors that did not participate in the composition, can be automatically rescheduled for a maximum of 18 months and any interest, penalties and other costs that would have applied are suspended (Article 30 (2)). However, as an exception to this rule secured creditors are bound only if they sign the agreement Article 29 (1)).

Creditors which have voted against the preventive composition plan may request it to be annulled within a period of 15 days from the date on which it was endorsed (Article 34). If absolute grounds for invalidity are invoked, the right to apply for a declaration of invalidity must be prescribed within six months of the date of the approval of the arrangement.

The measures covered by the preventive composition plan, including modification of claims, also benefit co-debtors and third-party guarantors (Article 33 (2)).

### **Judicial reorganisation procedure**

The reorganisation plan binds all creditors, including secured creditors, if the requisite majorities in favour of the plan described above are achieved.



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

### Mandate ad hoc procedure

The ad hoc agent is charged by the court with negotiating an arrangement with the debtor and one or more creditors within a maximum period of 90 days from designation of the agent by the debtor (Article 13 (2)). There is no possibility to extend the duration of the agent's appointment. The procedure may come to an end earlier if an agreement is concluded between the parties (Article 15 (1)).

### Preventive composition procedure

Within 30 days of the appointment of an insolvency practitioner (composition administrator), such practitioner must prepare, together with the debtor, the offer of a preventive composition for creditors (Article 23). The period for conducting the negotiations on the draft preventive composition may not exceed 60 calendar days (Article 26). The approval of creditors must be achieved within 90 days from the designation of an insolvency practitioner.

There is no prescribed maximum period for the duration of the moratorium. The initial moratorium is available at the request of the debtor based on an offer or plan for preventive composition (Article 25) and remains in place until an enforceable decision to endorse the composition has been delivered or until the offer of a composition has been rejected. If the plan is approved and endorsed by the judge, enforcements against the debtor are suspended for the duration of the plan (Article 29).

The preventive composition plan must be implemented within 24 months from the date of creditors' approval, with the possibility of a 12-month extension. In the first year, the debtor must repay creditors at least 20 per cent of the sum of the claims established in the composition plan.

### Judicial reorganisation procedure

The maximum duration of the observation period following the opening of insolvency proceedings is 12 months (Article 112 (3)). The judicial reorganisation plan must be submitted within 30 days after publication of the final table of creditor claims (Article 132). This deadline may be extended by the judge by a maximum of 30 days (Article 132).

Subject to certain Covid-19 related special provisions, the implementation of the reorganisation plan cannot exceed three years calculated from the date of the confirmation of the plan. The initial timeframe of three years may be further extended by one year without exceeding a period of four years in total from the confirmation of the reorganisation plan (Articles 133 and 139).

There is no prescribed maximum period for the moratorium. It remains in place for the duration of the procedure.

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

Yes, as part of the Insolvency Law. As a member of the European Union, Romania is subject to **Regulation (EU) 2015/848** on insolvency proceedings, which governs the coordination of cross-border insolvency proceedings within the EU.

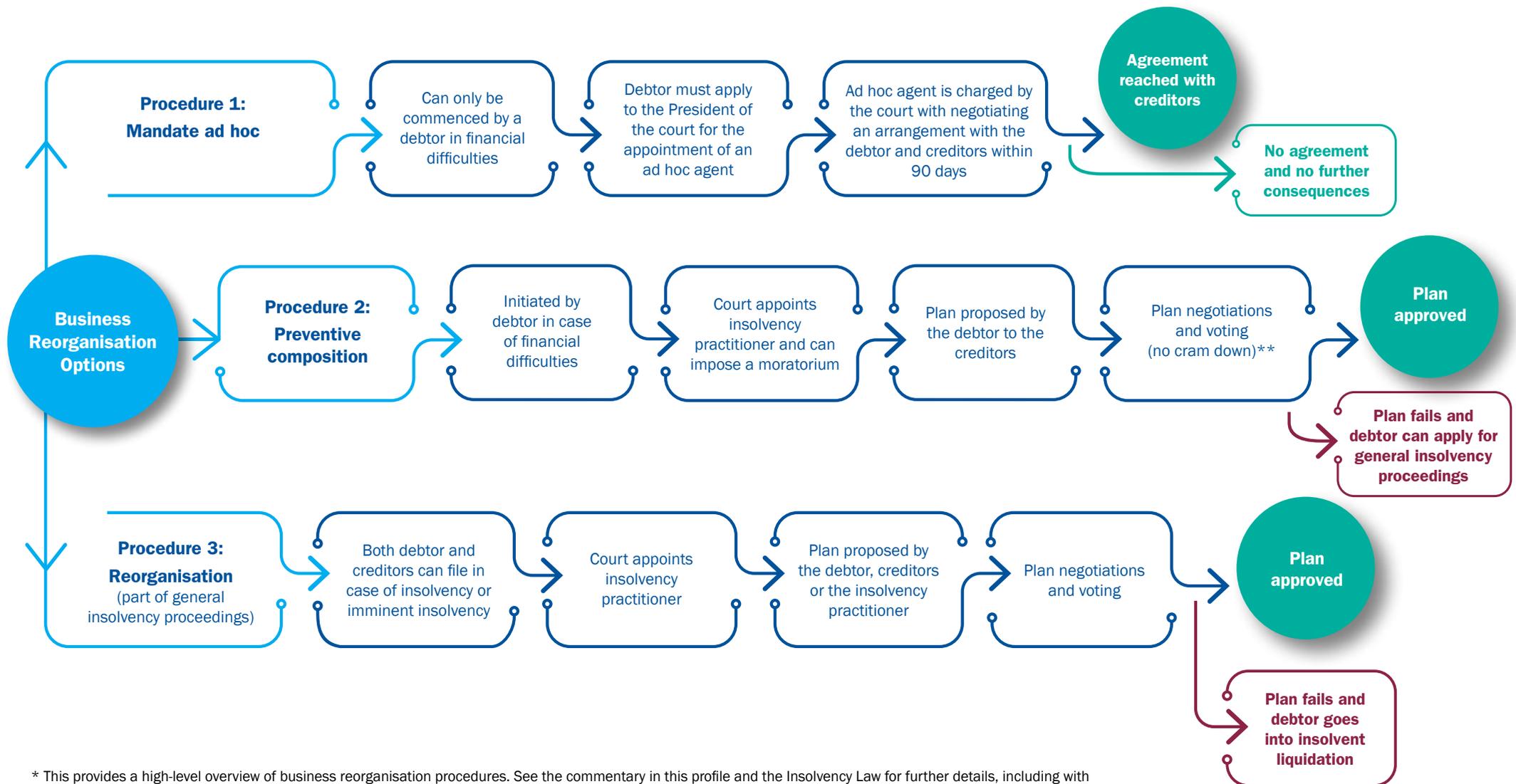


## Special features/observations:

- The Romanian insolvency legislation has been inspired in part by the French insolvency system. The mandate ad hoc procedure is similar to the French mandat ad hoc procedure and is confidential.
- The Romanian insolvency market features a strong and active group of insolvency practitioner firms that are specialised in restructuring and turn-around strategies for insolvent companies.
- The court has the power under the preventive composition procedure to automatically reschedule the claims of creditors (other than creditors under a qualified financial contract or bilateral netting transaction) which did not sign the preventive composition plan, including those creditors that did not participate in the composition, for a maximum of 18 months, and any interest, penalties and other costs that would have applied are suspended.



# Overview of Romanian 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.

\*\* The court has the power to automatically reschedule the claims of creditors (other than creditors under a qualified financial contract or bilateral netting transactions) which did not sign the preventive composition plan, including those creditors that did not participate in the composition for a maximum of 18 months.

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