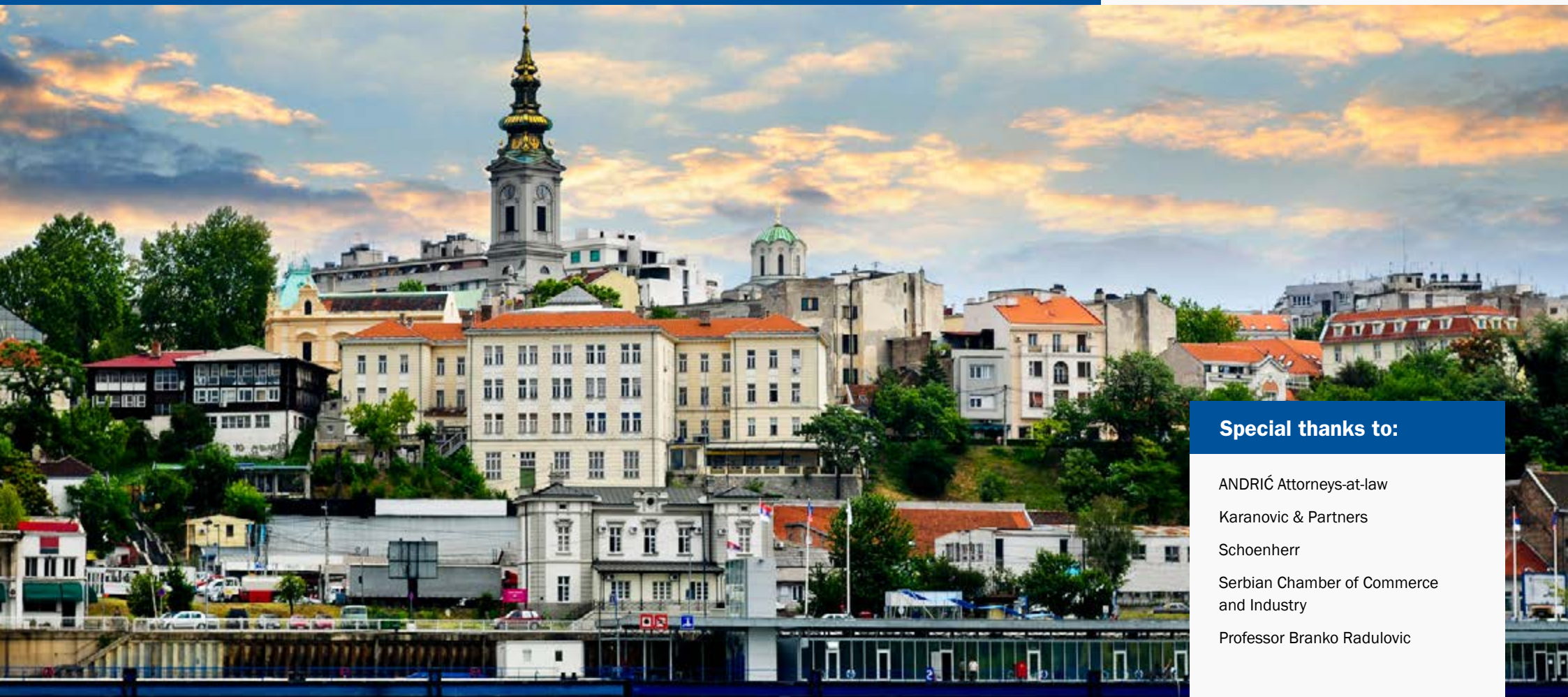
Business Reorganisation Assessment

Serbia

European Bank
for Reconstruction and Development



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Part A

General Information

Macro Data

6.936	5.0%	US$ 8,750	din Serbian dinar – RSD	15%	2.2%	13.0%
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 texts governing insolvency and restructuring proceedings of legal entities are the **Bankruptcy Law** (the Insolvency Law), (Official Gazette of the Republic of Serbia Nos. 104/2009, 99/2011, 71/2012, 83/2014, 113/2017, 44/2018 and 95/2018), as amended, and the **Law on Consensual Financial Restructuring of Companies** (the Restructuring Law) (Official Gazette of the Republic of Serbia, No. 89/2015). There is no law for entrepreneur or consumer insolvency yet, although the government authorities have made efforts in recent years to formulate proposals regarding entrepreneur insolvency. Entrepreneurs may, however, participate in the consensual financial restructuring procedure under the Restructuring Law.

The Law on **Bankruptcy Supervision Agency** (Official Gazette of the Republic of Serbia Nos. 84/2004, 104/2009, 18/2005 and 89/2015), effective as of 1 August 2004, introduced the Bankruptcy Supervision Agency, the main insolvency regulatory body.

Insolvency Data

The Serbian Bankruptcy Supervision Agency maintains and publishes all statistics on insolvency (bankruptcy) proceedings on its **website**, other than data with respect to pre-negotiated reorganisation plans. Data is only available in Serbian.

According to research conducted by the International Finance Corporation, based on official information and statistics, from January 2019 until May 2021, 73 reorganisation proceedings were initiated, out of which 57 involved pre-negotiated reorganisation plans. Out of this number, a total of 62 legal entities initiated proceedings, including nine companies which initiated multiple procedures. The vast majority of debtors (54 in total) were privately owned companies, while the remaining eight debtors were either state-owned, or were companies where the state was the majority/largest shareholder. In the observed period, out of 73 initiated proceedings, in 24 proceedings (i.e., in approx. one-third of proceedings) plans were adopted. Out of 62 legal entities, 48 (77.4 per cent) were listed as “active”, while 13 were “in bankruptcy”[3], which may also be due to the fact that the plan was not voted by the required majority or that the implementation of the plan was not successful, and one debtor was in compulsory liquidation. The restructured debt in reorganisation plans adopted in this period amounted to €303.5 million, with €3.1 million disputed receivables. As of May 2021, the total amount of restructured debt since the introduction of pre-negotiated plans therefore totalled above €3 billion.

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

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

[3] Bankruptcy proceedings include either liquidation or reorganisation and are referred to as insolvency proceedings in this document.

Outside of insolvency proceedings, according to data supplied by the Serbian Chamber of Commerce and Industry, there have been a total of 55 cases of financial restructuring under the Consensual Restructuring Law since its enactment in 2011 until end of June 2021 inclusive. Out of these cases, 23 were successfully completed, of which a multi-creditor agreement on consensual financial restructuring was concluded in 18 cases, and with the support of the Serbian Chamber of Commerce and Industry, bilateral agreements were concluded in five cases. The total amount of liabilities restructured under the framework exceeds €40 million. There were 55 cases, of which 54 were initiated by debtors. One of the 54 cases was an entrepreneur. Entrepreneurs have been able to initiate consensual restructuring proceedings under the framework since 3 February 2016.

During the period from 1 January 2019 onwards, a total of five consensual restructuring cases were initiated, out of which four were successfully completed and one is still in progress. The total amount of liabilities restructured from 1 January 2019 until end of June 2021 is approximately €1.5 million.

Company Information

The Serbian company law framework is governed by the Civil Code, the Companies Law (Official Gazette No. 36/2011), the Law on the Capital Markets (Official Gazette No. 31/2011) and the Law on Tax Procedure and Tax Administration (Official Gazette No. 80/2002), in each case as amended. Information about companies in Serbia is available in the Serbian Business Registers Agency. The register is available online free of charge **here** and is updated in real-time including decisions on commencement of insolvency proceedings.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency courts are commercial courts and the competency of the insolvency court is established based on the location of the debtor's registered address (i.e., the territorial jurisdiction of the relevant commercial court). Specialised judges oversee insolvency cases. The relevant regulatory authority for insolvency proceedings is the Bankruptcy Supervision Agency which sits under the Ministry of Economy and began operations in 2005 and, with respect to the Consensual Restructuring Law only, the Chamber of Commerce and Industry in Serbia.

The purpose of the Bankruptcy Supervision Agency is to provide efficient supervision of the work of insolvency practitioners (known as bankruptcy administrators) and to ensure higher professional competency, quality and standards. Furthermore, the Agency is in charge of conducting the exams which are required in order to qualify as an insolvency practitioner, as well as maintaining an up-to-date list of all qualified and registered insolvency practitioners in Serbia.

Continue to Part B →

Part B

Business Reorganisation

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

Yes, the Consensual Restructuring Law provides for both tax-related and bank-related incentives if the debtor opts for voluntary financial restructuring.

The law establishes tax incentives for financial restructuring, specifically tax exemptions if the debtor concludes a debt write-off with creditors, as well as possibilities for rescheduling any tax debts. The debtor is entitled to apply for a special deferment of tax debt payments, even if a deferral had previously been granted. Furthermore, the value of written-off individual claims is recognised as expenditure rather than profit, provided those claims were included in the consensual financial restructuring (Article 74b of the Law on Tax Procedure and Tax Administration and Article 16 paragraphs 3 and 4 of the Law on Corporate Income Tax).

However, the same incentives apply also to pre-negotiated reorganisation plans conducted under the Insolvency Law.

What is the nature and purpose of the reorganisation procedure?

There is one reorganisation procedure under the Insolvency Law with one option for pre-negotiated reorganisation. There is also a voluntary framework for financial restructuring under the Consensual Restructuring Law. **Click here** for a high-level overview of these procedures.

A guide to the Consensual Restructuring Law was prepared by a team of experts led by the EBRD and is available on the website of the Serbian Chamber of Commerce and Industry here.

Consensual financial restructuring procedure

The consensual financial restructuring procedure (sporazumno finansijsko restrukturiranje) is voluntary in nature and relies on a system of institutional mediation by the Chamber of Commerce and Industry of Serbia (the CCIS) to encourage debtors to reach a financial restructuring agreement with their creditors (Article 1 of the Consensual Restructuring Law).

Reorganisation procedure

The reorganisation procedure (reorganizacija) aims to achieve the satisfaction of creditor claims by means of a reorganisation plan which redefines relations between the debtor and its creditor, or changes the debtor's legal status, or other means provided by the plan (Article 1).

Reorganisation is conducted if this ensures more favourable settlement of creditors than liquidation of assets and is conducted in accordance with a reorganisation plan. The plan may be filed concurrently with the petition for insolvency or after the opening of insolvency proceedings. If the plan is filed concurrently with the petition for insolvency, it is known as a pre-negotiated reorganisation plan (Article 155). This pre-negotiated plan is then subject to written objections from creditors and is ultimately discussed at a hearing convened by the judge.

References to Articles in this part are to Articles of the Insolvency Law or the Consensual Restructuring Law as specified and subsequently. 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?

Consensual financial restructuring procedure

The debtor (or one or more of its creditors) contacts the CCIS requesting detailed information about the procedure of consensual financial restructuring of companies. After the debtor has received such information, it must decide whether to initiate the procedure. To do so, the debtor needs to submit an official request to the Centre for Services and Mediation of the CCIS, following which it prepares a proposal for a financial consolidation plan. After receipt of the application for mediation, the CCIS submits a letter notifying both sides of the initiation of proceedings (Article 3).

The Centre for Services and Mediation within the CCIS assesses whether the criteria for commencing the procedure are met, as well as whether the request contains all the necessary details for starting the procedure. The basic conditions required are the participation of two Serbian or foreign banks in the procedure, or one bank if the debtor is an entrepreneur, and that the debtor-creditor relationship is of a commercial nature that is suitable for a consensual financial restructuring (Articles 3 and 5). A Serbian development institution may also participate in the procedure instead of a Serbian bank.

If the formal requirements for consensual financial restructuring proceedings are met, the Director of the Centre for Services and Mediation preliminarily determines one or more mediators (co-mediators), depending on the nature and complexity of the case, from the list held by CCIS, in order to assist with further communication between the parties and preparation for institutional mediation in consensual financial restructuring procedure (Article 6).

Reorganisation procedure

The Insolvency Law provides for two types of reorganisation procedures: regular reorganisation, where the plan is submitted within the insolvency proceedings (Article 161 of the Insolvency Law) and pre-negotiated reorganisation, where a pre-negotiated plan is presented with the petition for initiating insolvency proceedings (Articles 155 and 158).

A regular reorganisation plan may be filed by an authorised petitioner, meaning the debtor, the insolvency practitioner (known as a bankruptcy administrator), a secured creditor, an unsecured creditor, or persons holding at least 30 per cent of the debtor's capital.

In the case of a regular reorganisation procedure, the plan should be filed within 90 days from the opening of insolvency proceedings (Article 162).

Insolvency proceedings are initiated by the court where the existence of at least one of the following grounds exists: permanent insolvency; pending insolvency (where the debtor makes it apparent that it will not be able to pay its debts as they become due); over-indebtedness, where the liabilities of the debtor exceed its assets; and/or failure of the debtor to comply with an adopted reorganisation plan or if the reorganisation plan entered into effect is fraudulent or unlawful.

Permanent insolvency is deemed to exist if the debtor: cannot meet its debts within 45 days of such debts becoming due; or has completely ceased to make all payments for a consecutive period of 30 days. It is presumed to exist if insolvency proceedings have been initiated on the petition of a creditor unable to settle its monetary claim by any of the means of enforcement through court or tax enforcement procedure pursued within the Republic of Serbia (Articles 11 and 12).

Is there any court involvement?

Consensual financial restructuring procedure

No, only the CCIS is involved. As this is a voluntary procedure based on mediation, there is no court involvement.

Reorganisation procedure

Yes, as described above, the reorganisation procedure is court-supervised. However, the pre-negotiated reorganisation plan has more light-touch court involvement.

Are there any hybrid reorganisation procedures?

Yes, the pre-negotiated reorganisation plan described in Article 158 of the Insolvency Law is a hybrid procedure. The debtor has the option to submit a petition for a pre-negotiated reorganisation plan and may withdraw it at any point.

Does the debtor remain in possession of the company and continue carrying on its business operations?

Consensual financial restructuring procedure

Yes, the debtor remains in possession and there is no supervision of the debtor's business activities.

Reorganisation procedure

No, in regular reorganisation proceedings, the insolvency practitioner manages the debtor's business. From the day of the opening of the insolvency proceedings, the representation and management rights of the director, representative, or attorney, as well as of the management and supervisory bodies of the debtor, cease and are transferred to the insolvency practitioner (Articles 19 and 74).

However, in a pre-negotiated reorganisation, the debtor remains in possession, but the judge may order security measures to prevent the change of the financial and property status of the debtor, which can include the appointment of an interim insolvency practitioner (Article 159).

Is there a need to appoint an insolvency practitioner?

Consensual financial restructuring procedure

There is no need to appoint an insolvency practitioner since this is a voluntary out-of-court restructuring procedure.

However, the procedure does envisage the appointment of a mediator. Thus if the formal requirements for commencement of consensual financial restructuring proceedings are met, the Director of the Centre for Services and Mediation preliminarily appoints one or more mediators (co-mediators), depending on the nature and complexity of the case, from the list held by CCIS to assist the parties in reaching an agreement. The mediator is a person who mediates between the parties, without the power to impose a solution (Article 13).

Reorganisation procedure

Yes, in regular reorganisation proceedings an insolvency practitioner is appointed by the judge in the decision to open the insolvency case. The insolvency practitioner manages the business of the debtor.

However, during a pre-negotiated reorganisation procedure, the debtor remains in possession without the appointment of an insolvency practitioner unless the judge orders the application of protective measures to preserve the financial and property status of the debtor. Such measures may include the appointment of an insolvency expert or person who is a qualified insolvency practitioner (person is not appointed in capacity of insolvency practitioner) (Article 159).

Is there any applicable stay or moratorium?

Consensual financial restructuring procedure

No, however the parties participating in a consensual financial restructuring can agree on a contractual standstill. The Consensual Restructuring Law allows for participating creditors to execute a standstill agreement with the debtor but this is not obligatory. A standstill agreement will bind only the creditors which are a party thereto (Article 10).

Reorganisation procedure

Yes, in the case of regular reorganisation. As of the day of opening of insolvency proceedings, no enforcement proceedings or any other enforcement action may be taken against the debtor or the property of the insolvency estate for the purpose of settling any claims, except enforcement relating to liabilities of the insolvency estate and expenses of the insolvency proceedings. The moratorium may be lifted by the judge at the request of a secured creditor, in the circumstances envisaged by the Insolvency Law.

In case of pre-negotiated reorganisation, the judge may take (at the request of the petitioner) measures to protect the debtor's property as part of its decision to commence preliminary insolvency proceedings. Measures may include a moratorium on enforcement actions against the debtor's property, including with respect to secured creditors (Article 159b).

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

Consensual financial restructuring procedure

No. Given that the consensual financial restructuring procedure is voluntary in nature and based on the consent of the parties, there are no legislative protections against contractual termination clauses triggered by commencement of consensual financial restructuring negotiations or for contracts that are essential for the debtor's day-to-day operations.

Reorganisation procedure

No, the Insolvency Law does not have any general provisions which would prevent third parties from terminating contractual agreements as a consequence of one of the parties entering into insolvency proceedings, including reorganisation. It equally has no general provisions in relation to protection of contracts that are essential for the continuation of the debtor's day-to-day activities.

However, there are some protections for leasehold agreements and financial leasing agreements to prevent the lessor of the debtor cancelling the lease due to the non-payment of rent or a deterioration of the debtor's financial condition after a proposal to initiate insolvency proceedings has been submitted.

Is new financing protected by law?

Consensual financial restructuring procedure

No. Since the consensual financial restructuring procedure may take place only among certain creditors and is voluntary in nature, any injection of new financing does not affect the statutory ranking of creditors in insolvency. However, the parties to a consensual financial restructuring agreement may agree as a matter of contract for new financiers to have priority.

Reorganisation procedure

Yes, the insolvency practitioner in insolvency proceedings and the debtor implementing the reorganisation plan may obtain unsecured credit or incur debt secured on the property of the debtor. This is considered an expense of the estate in any future insolvency and ranks ahead of existing preferred and unsecured creditors but does not affect the rights of secured creditors (Articles 27 and 104).

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

Consensual financial restructuring procedure

There is no voting process. The procedure is based on the consensual agreement of the participating creditors. A creditor can submit its withdrawal from the procedure, which continues provided at least two banks continue participating or at least one bank if the debtor is an entrepreneur (Article 11).

Reorganisation procedure

Yes. Creditors' claims are divided into classes based on secured and priority rights of their claims according to payment ranks. The judge may order or allow the formation of one or more additional classes provided that: real and substantial attributes or rights of claims are such that the formation of a separate class is warranted; and all the claims within the proposed separate class are substantially similar (Article 165). Furthermore, a special administrative class of creditors may be formed for administrative reasons if there are more than 100 claims whose amounts individually do not exceed RSD 50,000 (approx. €425) provided that the court approves the formation of such a class. It is to be noted that third parties affiliated with the debtor (except for those which, within their regular activity, are engaged in granting loans) form a special class of creditors and do not vote on the reorganisation plan (Article 165).

What are the majorities required to approve a reorganisation plan?

Consensual financial restructuring procedure

There is no voting process. The procedure is based on the consensual agreement of the participating creditors. A creditor can submit its withdrawal from the procedure, which continues as long as at least two banks continue participating or at least one bank if the debtor is an entrepreneur (Article 11) and is binding on parties thereto only.

Reorganisation procedure

The reorganisation plan is deemed to be accepted by a class of creditors if creditors owing a simple majority of total claims in that class vote in favour of the reorganisation plan adoption. The reorganisation plan will only be deemed adopted if all voting classes of creditors duly accept the plan (Article 165).

Who does the reorganisation plan bind?

Consensual financial restructuring procedure

If the parties participating in the consensual financial restructuring procedure reach an agreement, then the agreement is signed and verified by the CCIS. The agreement is recorded in a special register (Article 12) and is binding on parties thereto only.

Reorganisation procedure

On the court's decision confirming the reorganisation plan, all claims and rights of the creditors and other parties along with obligations of the debtor specified by the plan, are governed solely by terms stated within the plan. The court-approved reorganisation plan has the force of executive title and is considered to be a new contract for the satisfaction of claims covered by the plan (Article 167). Such plan binds all creditors, irrespective of their vote.

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

Consensual financial restructuring procedure

Following a request filed by one party before the CCIS for the commencement of a consensual financial restructuring procedure, the Centre for Mediation of the ICCS will forward it to the other parties, which have 15 days from the receipt to respond (Article 3).

There is no specific timeframe to conduct a consensual financial restructuring procedure, but it should be carried out without delay (Article 6).

There is no applicable moratorium, but the parties can execute a standstill agreement, i.e. a contractual agreement by which the creditors undertake not to take enforcement action for a limited period in return for certain undertakings by the debtor.

Reorganisation procedure

The judge must issue a decision initiating the preliminary insolvency procedure within three days from the day of the receipt of the petition for insolvency (Article 60). Where the court has commenced preliminary proceedings, the judge must schedule a hearing for discussion on whether the grounds for opening insolvency proceedings exist not later than 30 days from the receipt of the petition to open proceedings (Article 68).

The investigation hearing is held within the time period of 30 to 60 days from the final day of the term set in the decision on the submission of claims (Article 72).

In the case of a regular reorganisation procedure, the plan must be filed within 90 days from the opening of insolvency proceedings, and there is no firm deadline for its adoption. Similarly, there is no specific limitation period for the moratorium.

With respect to a pre-negotiated reorganisation, the plan is filed concurrently with the petition for commencing insolvency proceedings (Articles 155 and 162). The judge is required to issue a decision within three days of a pre-negotiated plan insolvency filing to establish if conditions have been met to open preliminary proceedings and convenes a hearing for voting on the plan. The hearing must be held within 60 to 90 days from the date of initiation of preliminary proceedings (Article 159). If the plan is adopted at the hearing by the creditors, the judge formally opens main insolvency proceedings, confirms adoption of the plan and closes the proceedings by the same decision (Article 160).

A moratorium in case of the pre-negotiated reorganisation plan is, however, limited to six months and may not be re-imposed again in the same preliminary insolvency proceedings. In practice, based on a database prepared by the International Finance Corporation for the period 2015 to 2021, a pre-negotiated reorganisation procedure takes on average approximately five and a half months from filing to adoption of the plan and approximately ten months from submission of the petition by the debtor to the conclusion of proceedings.

The maximum prescribed term for implementation of any reorganisation plan may not exceed five years and the commencement date must be clearly indicated in the plan (Article 156).

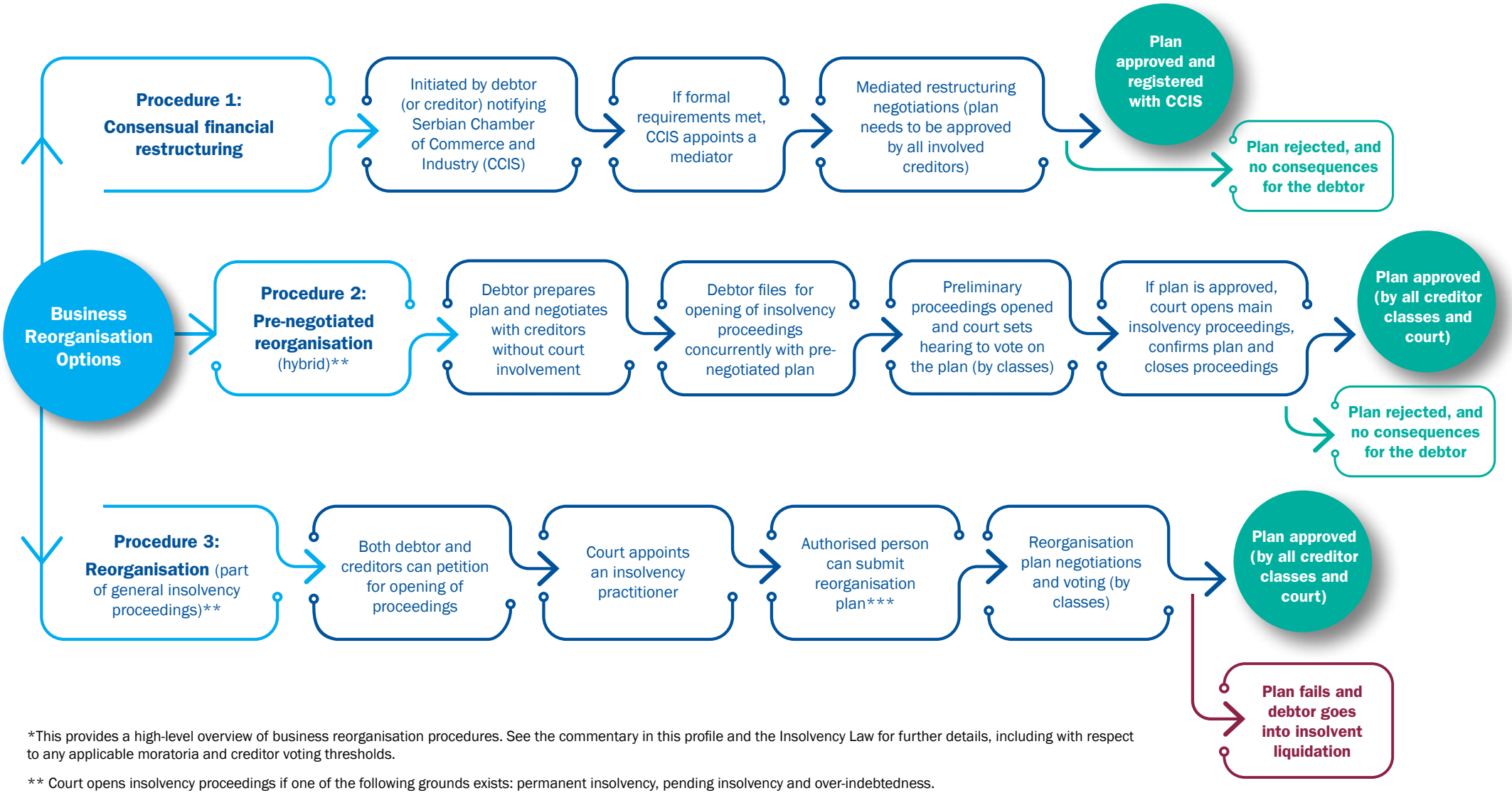
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

Yes, in 2004. As a consequence, foreign insolvency proceedings are eligible for recognition in Serbia if certain criteria are met (Article 174b). Effects of recognition of foreign proceedings may include: commencement or discontinuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities; compulsory execution against the debtor's assets; and the right to transfer, encumber or otherwise dispose of any assets of the debtor (Article 191).

Special features/observations:

- Serbia has a voluntary financial restructuring framework known as 'consensual financial restructuring', which is based on mediation and is overseen by the Serbian Chamber of Commerce and Industry.
- Serbia is among relatively few economies where we operate where there is a (hybrid) pre-negotiated reorganisation procedure that allows a company to present simultaneously with the petition for the opening of insolvency proceedings a pre-negotiated plan for court-supervised reorganisation. This is an option, not an obligation, as the plan can also be submitted following the petition for commencement of regular insolvency proceedings.

Overview of Serbian 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 insolvency proceedings if one of the following grounds exists: permanent insolvency, pending insolvency and over-indebtedness.

*** An authorised person means the debtor, the insolvency practitioner (known as an administrator), a secured creditor, an unsecured creditor, or persons holding at least 30% of the debtor's capital.

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