

# Business Reorganisation Assessment

📍 Slovak Republic



**European Bank**  
for Reconstruction and Development



## Special thanks to:

Allen & Overy

Majerník & Miháliková Law Firm

## Part A

# General Information

## Macro Data

5.458	4.7%	US\$ 21,530	€ Euro – EUR	15-21%	1.2%	7.3%
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 text governing insolvency proceedings in the Slovak Republic is the **Act No. 7/2005 Coll. on Bankruptcy and Restructuring** (the Insolvency Law) dated 9 December 2004, as amended. Relevant secondary legislation includes the **Act No. 8/2005 Coll. on Insolvency Practitioners (the Law of Insolvency Practitioners) as amended**.

In addition to the above, the **Act No. 421/2020 Coll. on Temporary Protection of Businesses in Financial Difficulties** (the Slovak Temporary Protection Act), as amended, became effective as of 1 January 2021, initially as a response to the Covid-19 pandemic and is effective until 31 December 2022. The Slovak Temporary Protection Act creates a time-limited framework for

protection of a debtor business against creditors, along with instruments to support businesses in financial difficulties. The Slovak Temporary Protection Act is available for legal entities and entrepreneurs.

The transposition of **Directive (EU) 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 has not taken place yet. The authorities have obtained an extension and transposition is planned by 31 July 2022.

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

<sup>2</sup> PWC – Source as of July 2021:  
[taxsummaries.pwc.com/slovak-republic/corporate/taxes-on-corporate-income](https://taxsummaries.pwc.com/slovak-republic/corporate/taxes-on-corporate-income)





## Insolvency Data

The **Ministry of Justice** of the Slovak Republic maintains an **Insolvency Register** which is the platform on which data on insolvency proceedings of legal entities is published. The platform is publicly available and free of charge. From January 2021 to 11 August 2021, 21 submissions for restructuring proceedings were presented to the court out of which 18 restructuring proceedings are still ongoing. Overall, as at 11 August 2021, there were 3,578 ongoing insolvency proceedings and 54 restructuring proceedings. **Statistics** on the duration of the insolvency and restructuring proceedings are also available in the Insolvency Register. Based on these statistics, restructuring proceeding can last from less than three months to more than five years. A table summarising the data from 2018 to 2021 is set out below.

Year	Bankruptcy (liquidation) proceedings submissions (legal entities)	Ongoing bankruptcy (liquidation) proceedings (legal entities)	Restructuring proceedings submissions (legal entities)	Ongoing restructuring proceedings (legal entities)
2018	497	218	18	0
2019	458	229	15	1
2020	335	188	25	1
2021 (as of 11 August)	353	292	21	18

## Company Information

The Slovakian company law framework is governed mainly by the **Commercial Act No. 513/1991 Coll.** and the **Civil Code No. 40/1964 Coll.**

The **Business Register**, created in 1992, is under the Ministry of Justice. It acts as a portal in which all the information about individual entrepreneurs and legal entities are centralised from the local district registers. Searches can be made by providing the business name, the registered seat or the registration number of an entrepreneur or a legal entity. The website allows registered entities to be searched free of charge.

Business and corporate documents of individual entrepreneurs and legal entities are accessible in the **List of Deeds**. Any party can request a copy of a document entered into the List of Deeds subject to payment of a fee.

## Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency proceedings are overseen by district courts which are courts of first instance (located in Bratislava, Trnava, Trenčín, Nitra, Žilina, Banská, Bystrica, Košice and Prešov). Jurisdiction of the court in relation to legal entities is determined by the location of the registered office of the company and, in relation to natural persons, including entrepreneurs, by the place of main residence.

The main regulatory body for insolvency is the Ministry of Justice. The **Insolvency Register**, which is overseen by the Ministry of Justice, contains more than 606 licensed professionals and companies which provide insolvency practitioner services in the Slovak Republic. The Insolvency Register maintains a list of insolvency practitioners, also known as administrators, and the proceedings they have participated in or are currently participating in along with the details of the relevant court. The Ministry of Justice is in charge of conducting the entry examination for insolvency practitioners as established by the Law of Insolvency Practitioners. A prerequisite to sit the examination is a master's degree in law or economics.



Continue to Part B →

## 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, a debtor is obliged to take steps to prevent insolvency (Article 4 (1)). If a debtor meets the statutory criteria for applying for insolvency proceedings, it has the statutory obligation to do so and this cannot be remedied by commencing an informal restructuring.

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

Under the Insolvency Law, there is one reorganisation procedure for debtor's imminent insolvency or insolvent called the restructuring (reštrukturalizácia) procedure. An early protection mechanism (dočasnej ochran) is also available under the Slovak Temporary Protection Act.

**Click here** for a high-level overview of the reorganisation procedure and the early protection mechanism.

#### **Restructuring procedure**

The aim of this procedure is the gradual satisfaction of the debtor's creditors in the manner agreed under the restructuring plan and the continuation of the debtor's business operations (Article 108).

The feasibility of the restructuring must be supported by an expert opinion prepared by an insolvency practitioner (also known as the restructuring practitioner) before the filing of the petition. The outcome of the restructuring proceedings is a restructuring plan that is approved by relevant majorities of the creditors (and in some circumstances, also by the shareholders) and confirmed by the court.

#### **Early protection mechanism** (Slovak Temporary Protection Act)

The purpose of this temporary protection procedure is to create a time-limited framework for protection of the debtor against creditors, along with instruments to support a debtor in financial difficulties. Such protection should enable the debtor to continue doing business and

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

#### **Restructuring procedure**

A debtor may file a petition for the opening of restructuring proceedings directly if it is already insolvent, but also in cases where the insolvency is imminent. In support of its petition it must present an opinion from an authorised insolvency practitioner opinion (which must not be older than 30 days prior to the date of filing of the petition) recommending the restructuring.

The debtor's creditors are allowed to appoint the insolvency practitioner and to make a petition for restructuring themselves. However, in practice, this requires substantial cooperation from the debtor. Therefore, unless the debtor agrees with the use of restructuring proceedings, a successful initiation of this type of insolvency proceedings by the creditors is somewhat hypothetical (Articles 108, 109, 111 and 112).

In the opinion, the insolvency practitioner will recommend a restructuring of the debtor only if: the debtor performs a business activity and is insolvent or where insolvency is imminent; it is reasonable to expect that at least a material part of the operations of the debtor's business can be preserved; and it is reasonable to expect that the debtor's creditors will achieve higher recoveries in restructuring of the debtor than in insolvent liquidation (Article 110).

#### **Early protection mechanism** (Slovak Temporary Protection Act)

A debtor which has a registered seat in or a centre of main interests in the territory of the Slovak Republic is entitled to apply for temporary protection to the district court of its registered seat (Article 2).

A debtor can file for the early protection mechanism if an absolute majority of its creditors, calculated according to the amount of their claims, has already agreed on the early protection, and if the debtor is not eligible to file for insolvency proceedings. The debtor cannot have filed for an early protection in the last 48 months prior to its application and no execution procedure or similar enforcement procedure can be pending against the debtor (Article 6).



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?

### **Restructuring procedure**

Yes. The court issues a resolution on commencement of the restructuring procedure if all statutory conditions are met (Article 113).

In addition to this, once the restructuring is opened, the court has the statutory obligation and right to supervise the activities of the debtor, the insolvency practitioner and the creditors' bodies. The court can demand explanations or reports on the restructuring from the insolvency practitioner. Also, for the restructuring plan to be effective, it needs to be confirmed by the court (Article 151).

### **Early protection mechanism** (Slovak Temporary Protection Act)

Yes, the debtor should file electronically, in a predetermined form, an application for early protection before the relevant district court and, if accepted, the court will issue a certificate of temporary protection (Articles 4 and 8).

## Are there any hybrid reorganisation procedures?

Both the restructuring procedure and the early protection mechanism are hybrid procedures since the court intervenes mainly in the approval of the plan in respect of the restructuring procedure, and in the acceptance of the application for temporary protection in respect of the early protection mechanism.



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

### **Restructuring procedure**

Yes, the debtor remains in possession of its assets and continues operating its business. However the debtor is generally under supervision of the court, the insolvency practitioner and the creditors (Article 130). The legal acts of the debtor during the restructuring procedure are subject to the consent of the insolvency practitioner, in accordance with the powers of the practitioner determined by the court in the resolution on opening the proceedings. The insolvency practitioner can be given a broader mandate to approve legal acts by the creditors' committee.

### **Early protection mechanism** (Slovak Temporary Protection Act)

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

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

### **Restructuring procedure**

Yes. Restructuring proceedings can only be commenced if an insolvency practitioner has prepared an opinion recommending the restructuring. The insolvency practitioner must prepare the opinion in an impartial manner using professional care. The persons who instructed the insolvency practitioner to prepare the opinion must provide the insolvency practitioner with the required cooperation, including access to all documents, information and explanations required for proper preparation of the opinion. The insolvency practitioner in charge of drafting the report can be chosen by the debtor or the debtor's creditors (Articles 108 and 109).

If the court decides to open the restructuring procedure, it will appoint an insolvency practitioner in its resolution opening such procedure. The insolvency practitioner is selected randomly by a court computer system (Article 116). The role of the insolvency practitioner is to supervise the debtor throughout the restructuring and to approve the relevant legal acts of the debtor that are subject

to the insolvency practitioner's consent (Articles 129 and 130). The insolvency practitioner appointment terminates on publishing of the resolution of the court on termination of the restructuring, unless the restructuring plan provides otherwise (Article 156).

### **Early protection mechanism** (Slovak Temporary Protection Act)

No insolvency practitioner is involved in this procedure.

## Is there any applicable stay or moratorium?

### **Restructuring procedure**

Yes, after the commencement of the restructuring proceedings there is: an automatic stay of individual court or administrative enforcement proceedings in respect of the claims of unsecured creditors; and an automatic stay of enforcement actions by individual secured creditors, without any exceptions (Article 114).

If the court orders the restructuring, any ongoing proceedings by unsecured creditors are automatically terminated.

There is also an automatic stay on any court or arbitration proceedings regarding claims that need to be filed in the restructuring (Article 118).

### **Early protection mechanism** (Slovak Temporary Protection Act)

Yes, during the temporary protection period provided by this mechanism, it is not possible to open insolvency proceedings against a debtor under temporary protection and the debtor is not obliged to file for the commencement of insolvency proceedings if insolvent. Initiation of enforcement proceedings is prohibited if the claim arose before the temporary protection was granted (with the exception of claims relating to illegal state aid, claims relating to EU funds or claims based on the decisions of EU bodies). Secured creditors with claims that arose before the temporary protection was granted cannot enforce their security and set-off of related-party claims is not allowed (Article 10).





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

#### **Restructuring procedure**

Yes. Any contractual provisions or stipulations allowing the other party to terminate or rescind an agreement entered into with the debtor due to restructuring proceedings or bankruptcy proceedings are ineffective. Furthermore, after commencement of restructuring proceedings, contractual counterparties may not terminate or rescind an agreement entered into with the debtor due to the debtor's default in any payment or performance that the other party became entitled to before the commencement of the restructuring proceedings. Any termination or rescission of

the agreement by contractual counterparties on these grounds is ineffective. There are no specific provisions in the legislation regarding essential contracts (Article 114).

#### **Early protection mechanism** (Slovak Temporary Protection Act)

Yes, during the temporary protection period provided by this mechanism, it is not possible for counterparties to terminate a contract, withdraw from a contract or refuse performance from a contract on the basis of a breach of contract by the debtor which occurred prior to temporary protection being granted. Provisions of contracts with similar content and effects are disregarded. This does not apply in certain circumstances, such as if this would jeopardise the operation of the other party's business or the contract is not an essential contract for the debtor (Article 10 (6)).

### Is new financing protected by law?

#### **Restructuring procedure**

Yes, with respect to the restructuring plan only. The restructuring plan may contain a provision on new financing or loans. Such new financing enjoys a priority ranking, but only over unsecured creditors and not secured creditors or preferred creditors (Article 141). There is no reference in the law to interim financing which may be required for the liquidity needs of the business during the proceedings.

#### **Early protection mechanism** (Slovak Temporary Protection Act)

Yes, a debtor under temporary protection may, for the purpose of maintaining the business, enter into, on arm's length terms, credit agreements or other agreements which are equivalent economically to credit agreements. The proceeds of the new financing may be used in connection with maintenance of business operations (Article 12).

Secured creditors of a debtor under temporary protection have a preferential right to provide new financing in proportion to the value of the collateral securing their claims, unless they agree otherwise. If secured creditors, or at least one secured creditor, do not provide the new financing, it may be provided by another person on arm's length terms (Article 13).

In the event of insolvency being declared within five years of the expiry of the temporary protection, creditors which provided such new financing will enjoy priority over unsecured claims against the debtor (Article 14).

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

### **Restructuring procedure**

Yes. The plan must establish separate groups of creditors for secured claims and for unsecured claims for voting purposes. These groups can be further sub-divided by the person submitting the plan, so that the claims of creditors with the same economic interests, mainly as regards the amount, legal grounds or security of their claims, can be included in separate groups based on these criteria.

The plan must always establish a separate group for each secured creditor, where it can be expected (acting with professional care) that the collateral securing such claim will be sufficient for at least partial satisfaction of such secured claim, unless the affected secured creditors agree with different set-up of the groups. This gives each secured creditor an effective veto on the plan, unless otherwise agreed. A separate group for shareholders shall be created if their rights may be affected by the plan and a separate group for subordinated creditors shall be created if such creditors exist (Article 137).

### **Early protection mechanism** (Slovak Temporary Protection Act)

No, the law does not recognise separate classes of creditors. The only requirement is the consent of an absolute majority in value of all creditors.

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

### **Restructuring procedure**

In order for the meeting of creditors to adopt the restructuring plan, the following is required:

- a simple majority of creditors by value should be reached in each class of secured creditors (i.e. no threshold of majority consent by number is contemplated for secured creditors);



- in each class of unsecured creditors, a majority by number of voting creditors with an ascertained number of claims that are higher than one per cent of all ascertained claims in the respective class has voted in favour of adoption of the plan and the votes of such creditors exceed the majority of the votes of voting creditors counted according to the ascertained value of their claims;
- in each class for shareholder claims, a simple majority of votes of voting shareholders in the respective class votes in favour of adoption of the plan, counted according to the number of their votes (€1 of claim equals one vote for the respective creditor); and
- in aggregate, a simple majority of the creditors by value attending the confirmatory creditors' meeting has voted in favour of adoption of the plan.

However, any dissenting classes of creditors may be subject to cross-class cram down. The plan may still be approved by the court and binding on all classes of creditors, notwithstanding the fact certain classes of creditors vote against the plan if overall: at least a majority of classes voted in favour of adoption of the

plan by the required majority; and a simple majority of creditors present voted in favour of adoption of the plan, according to the ascertained amount of their claims (Article 152). The request to the court for cross-class cram down should be made by the party submitting the plan. The court shall ensure that the dissenting classes 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.

Any class of creditors not affected by the plan is deemed to have consented to the plan. Any class in which no creditors have voted due to their absence is also deemed to have consented to the plan (Article 148).

### **Early protection mechanism** (Slovak Temporary Protection Act)

A simple majority of its creditors, calculated according to the amount of their claims, should consent to the early protection mechanism prior to the debtor's application to the court for relief. Related-party creditors and creditors whose claims against the applicant exceed a total of €100,000 will not be taken into consideration during the consent phase (certain exceptions apply) (Article 6).

## Who does the reorganisation plan bind?

### **Restructuring procedure**

On publication of the resolution confirming the plan in the Commercial Bulletin, the provisions of the plan become effective on all participants in the plan. However, the provisions of the plan relating to new financing are effective in relation to all third parties (erga omnes) (Article 155).

### **Early protection mechanism** (Slovak Temporary Protection Act)

The early protection mechanism does not include a plan. All creditors are affected by the temporary protection granted to the debtor by the court.

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

### **Restructuring procedure**

The petition for the declaration of restructuring can only be made if an insolvency practitioner has prepared a restructuring opinion, which must not be older than 30 days prior to the date of filing of the petition (Article 111).

If the court ascertains that the petition for restructuring complies with the statutory requirements, it must decide to commence restructuring proceedings within 15 days from receipt of the petition. Otherwise, it must reject the petition within the same time frame (Article 113).

The court must then within 30 days from the commencement of the restructuring proceedings decide whether or not to order a restructuring (Article 116).

If the court orders the restructuring, it will request the creditors to file their claims within 30 days of the court order (Article 121).

A filed claim can be contested only by the insolvency practitioner within 30 days from the date on which the time period for filing of claims lapses (Article 124).

After the restructuring has been ordered, the insolvency practitioner will convene a creditors' meeting within 30 days of ordering the restructuring, so that the meeting takes place no earlier than on the 15th and no later than on the 20th day since the date on which the time period for contesting claims lapses (Article 126).

The final draft of the restructuring plan must be submitted to the creditors' committee within 90 days from the ordering of the restructuring. The creditors' committee may extend this period by additional 60 days (Article 143).

In practice, restructuring proceedings should take between six to nine months.

The moratorium on commencement of the proceedings lasts until conclusion of the proceedings and publication of the decision of the court on the confirmation of the plan in the Commercial Bulletin.

### **Early protection mechanism** (Slovak Temporary Protection Act)

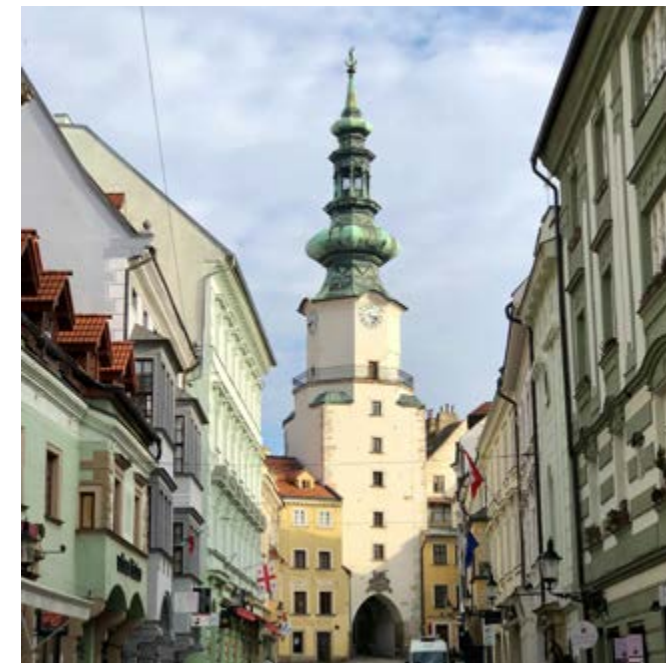
The initial period of temporary protection is three months starting from the day following publication of the certificate in the Commercial Gazette. However, the effects of the temporary protection are effective against third parties once they become aware of it. The debtor can request an extension of the temporary protection for additional three months, and the request needs to be submitted not earlier than 30 days and no later than 10 days before the expiry of the originally granted temporary protection (Articles 8 and 5).

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

No, the Slovak Republic has not adopted the UNCITRAL Model Law. However, cross-border insolvency provisions are included in Part V of the Insolvency Law. Furthermore, as a member of the European Union Slovakia is subject to **Regulation (EU) 2015/848** on insolvency proceedings, which governs the coordination of insolvency proceedings within the EU.

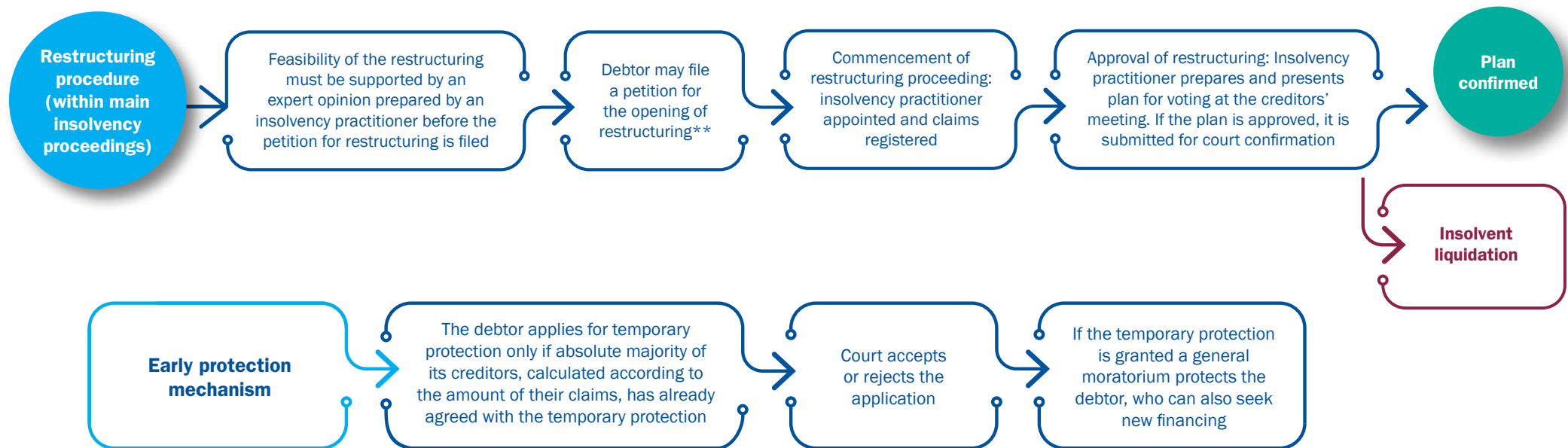
## Special features/observations:

- The Slovak Republic is among relatively few economies where we operate where cross-class cram down of dissenting classes of creditors is possible under the Insolvency Law. The Slovak Temporary Protection Act also introduced a temporary early protection mechanism in response to the Covid-19 pandemic.





# Overview of Slovak 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.

\*\* Creditors are allowed to appoint the insolvency administrator and to make a petition for restructuring themselves, but this requires substantial cooperation from debtor and the debtor's consent.

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