# Business Reorganisation Assessment

Slovenia

European Bank
for Reconstruction and Development

**Special thanks to:**

Ketler & Partners, member of Karanovic

Odvetniki Šelih & partnerji

Schoenherr

Part A

# General Information

## Macro Data

| 2.096 | 3.7% | US$ 28,100 | € Euro - EUR | 19% | 0.8% | 5.4% |
|---|---|---|---|---|---|---|
| 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 text governing business reorganisation proceedings of legal persons and entrepreneurs in Slovenia is the **Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act** (the Insolvency Law), as published in the Official Gazette of the Republic of Slovenia No. 126/2007, as amended.

In addition, the **Companies Act**, as published in the Official Gazette of the Republic of Slovenia No. 65/09, as amended, includes provisions applicable to voluntary and non-voluntary liquidation of companies and the **Obligations Code** (as published in the Official Gazette of the Republic of Slovenia 97/07, as amended, contains provisions relevant to the potential transfer of claims and other generally applicable civil law provisions.

In 2020, the Government began the process of amending the Insolvency Act to transpose **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 into Slovenian legislation. The adoption of amendments of the Insolvency Law are envisaged to be effective by the end of 2021.

The **Slovenian Principles of the Financial Restructuring of Corporate Debt** introduced in 2014 by the Bank Association, the Bank of Slovenia and the Ministry of Finance regulate voluntary out-of-court workouts.

### Insolvency Data

Official data on insolvency cases is available only for legal entities and entrepreneurs and is regularly published by the **Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES)** on its website. The information is updated in real-time and is publicly available for consultation.

The below table summarises recent available data on insolvency proceedings in Slovenia.

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

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

| Year | Insolvent liquidation proceedings initiated | Compulsory settlement proceedings initiated | Simplified compulsory settlement proceedings initiated | Preventive restructuring proceedings initiated |
|---|---|---|---|---|
| 2018 | 1,384 | 16 | 35 | 3 |
| 2019 | 1,294 | 13 | 33 | 3 |
| 2020 | 1,125 | 16 | 33 | 4 |
| 2021 (June) | 530 | 5 | 19 | 0 |

## Company Information

The main legislative framework for companies is the **Companies Act**. The Act includes key regulations regarding forms of company incorporation, relationships between shareholders, management and supervisors, corporate reorganisations, capital maintenance rules, group company rules and other aspects of corporate law. Certain sector-specific regulations found in the **Banking Act** (Official Gazette of the Republic of Slovenia No. 92/21), the **Insurance Act** (Official Gazette of the Republic of Slovenia No. 93/15, as amended), the **Investment Funds and Management Companies Act (Official Gazette of the Republic of Slovenia No. 31/15**, as amended), etc., provide for special rules applicable to the regulated corporate entities. Corporate governance is also shaped by several codes such as the **Corporate Governance Code of Companies for Listed Companies** of 2004 (Kodeks upravljanja za javne družbe), as amended, the Corporate Governance Code for Unlisted Companies of 2016, as amended, and the **Corporate Governance Code for State Owned Enterprises**.

The **Slovenian Business Register** (PRS) is a central database maintained by AJPES, which is also responsible for the insolvency database (see above). The register contains information about all profit and non-profit business entities with their principal place of business located in the Republic of Slovenia, as well as information on their subsidiaries and other divisions of business entities performing business activities in the territory. It is available online and free of charge. The register also provides all relevant information published in insolvency proceedings, e.g. decisions on the initiation of the proceedings, opening and regular reports, etc.

## Insolvency Courts, Regulatory Authorities and Practitioners

District Courts act as first instance insolvency courts and their territorial jurisdiction is established based on the location of the debtor's headquarters (i.e. whether this lies within the territorial jurisdiction of the relevant district court) in the case of legal entities or main residence in the case of natural persons and entrepreneurs.

The main regulatory authority for insolvency proceedings is the Ministry of Justice. The other authority involved in insolvency proceedings is the **Chamber of Insolvency Administrators of Slovenia**, which oversees insolvency practitioners (known as administrators) and maintains an **official list of insolvency practitioners**. The Insolvency Law contains all provisions relevant to the rights and obligations of insolvency practitioners. Insolvency practitioners in Slovenia are required to pass an examination conducted by the Ministry of Justice to acquire a special authorisation to act.

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Part B

# Business Reorganisation

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

There are no special incentives for extrajudicial restructuring. However, the **Slovenian Principles of the Financial Restructuring of Corporate Debt** provide guidance on conducting workouts. Furthermore, the Insolvency Law contains a hybrid preventive restructuring procedure, which enables a debtor experiencing financial difficulties to reach an agreement with respect to financial claims out-of-court.

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

There are three types of reorganisation procedures under the Insolvency Law: the preventive restructuring procedure (postopek preventivnega prestrukturiranja), the compulsory settlement procedure (postopek prisilne poravnave) and the simplified compulsory settlement procedure (poenostavljena prisilna poravnava). **Click here** for a high-level overview of these procedures.

**Preventive restructuring procedure**

This procedure may be used by debtor companies, excluding micro companies as defined in Section 2 of Article 55 of the Companies Act, and certain debtor entities such as banks, insurance companies and other financial institutions. In order to qualify for the procedure, the debtor must be very likely to become insolvent within a one-year period. The purpose of the procedure is to impose certain measures for the restructuring of the debtor's financial obligations, as well as other financial restructuring measures which are necessary to eliminate the causes of potential insolvency (Articles 44b and 44c). The procedure only affects financial creditors of the debtor, i.e. creditors holding financial claims. These can be secured and unsecured financial claims. Other creditors (most notably suppliers and other trade creditors) are not affected by the procedure unless they expressly consent to the terms of the restructuring agreement and are envisaged to be affected thereby.

**Compulsory settlement procedure and simplified compulsory settlement procedure**

Both these procedures aim to ensure the optimum conditions for the repayment of creditors' claims, both with respect to time and amount (Article 47).

Compulsory settlement proceedings must be conducted with a view to implementing a financial restructuring of a debtor's business, the purpose of which is to ensure that the creditors receive conditions for repayment of their claims that are more favourable than those in insolvent liquidation proceedings initiated against the debtor, taking into account the order of preferred claims and priority, ordinary and subordinate claims and secured claims.

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

**Preventive restructuring procedure**

Preventive restructuring proceedings may be conducted in relation to either ordinary unsecured financial claims only or both unsecured and secured financial claims. Only the debtor is eligible to file a petition for the initiation of preventive restructuring proceedings (Article 44f (2)).

This procedure is only available to debtors that are not yet insolvent where there is a great probability of insolvency within one year (Article 44d).

To initiate the procedure, the debtor must file a petition with the court accompanied by a list of the total financial claims against the debtor, an auditor's report reviewing the list of claims, and notarised statements of consent of creditors holding at least 30 per cent of all financial claims (Article 44h). However, notarised statements of consent of creditors holding at least 75 per cent of all financial claims must be submitted if the debtor either has already initiated a proposal to commence preventive restructuring procedures within the previous two years or has fulfilled its obligations from a confirmed compulsory settlement within the last two years.

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**

**Compulsory settlement procedure and simplified compulsory settlement procedure**

The debtor can petition for the opening of compulsory settlement provided that the relevant conditions are met. These include that the debtor is insolvent, that the possibility of successful restructuring exceeds 50 per cent and that the creditors are ensured better repayment than in the case of an insolvent liquidation proceeding. If these conditions are not met, the debtor must file a petition for an insolvent liquidation proceeding. If the debtor is not insolvent, but nevertheless petitions for insolvency proceedings, creditors may challenge the decision on the initiation of the proceedings.

The simplified compulsory settlement procedure is only available for a company classified as a micro company and entrepreneurs who meet the criteria of micro or small companies (Article 221a) and can be initiated against a company that is insolvent.

For both procedures, a petition can be filed by the debtor. Shareholders are generally not eligible to file for the initiation of the compulsory settlement procedure or the simplified compulsory settlement procedure. However, the law allows personally liable shareholders (i.e. shareholders of a legal entity who are liable for such entity's obligation by operation of law, such as shareholders of an unlimited liability company) to file a petition (Article 139).

Creditors which jointly hold over 20 per cent of all financial claims against the debtor, as shown in the debtor's last published annual report, also have the right to initiate a compulsory settlement procedure (Article 221j).

## Is there any court involvement?

Both preventive restructuring and compulsory settlement (including simplified compulsory settlement) procedures are overseen by the court. However, the preventive restructuring procedure has an out-of-court element. It allows the debtor to negotiate privately the terms of a financial restructuring with its financial and banking creditors (whose claims will be affected by the preventive restructuring) and to only present the agreed plan to the court for its approval.

## Are there any hybrid reorganisation procedures?

The preventive restructuring procedure is considered a hybrid procedure due to the more limited role of the court in the administration of the procedure.

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

**Preventive restructuring procedure**

Yes, the debtor remains in possession and is not subject to any monitoring or oversight by an insolvency practitioner.

**Compulsory settlement and simplified compulsory settlement procedures**

Yes, in general for both procedures the debtor remains in possession but in the compulsory settlement procedure the court appoints an insolvency practitioner to supervise the debtor's operations (until the compulsory settlement is confirmed) and to manage the formalities (Article 97). After initiation of the compulsory settlement procedure, the debtor may only perform regular transactions related to its business activities and the settlement of its obligations arising from these transactions.

The debtor may not: dispose of its property (except in cases where necessary to perform transactions related to its business activities or if this is envisaged by restructuring plan); take new loans or credits (with the exception of loans or credits required for ordinary course of business or to cover the costs of compulsory settlement); or give guarantees and carry out transactions or other acts which result in unequal treatment of creditors or the impossibility of carrying out financial restructuring.

In a compulsory settlement procedure over a small, medium-sized or large company the court may approve a change of the debtor's management and supervisors if the debtor fails to adhere to the restrictions enacted at the initiation of the compulsory settlement procedure (e.g. performs actions beyond ordinary course of business) or if the sum of all claims against the debtor is greater than the liquidation value of debtor's entire assets. This requires a request to be made by: the creditors on whose initiative the proceedings were commenced (in the case of a creditor-initiated compulsory settlement procedure); or the creditor committee.

If the nominal share capital of the debtor was increased as part of a restructuring (either by way of debt-to-equity swap or by monetary contributions) the creditors providing such contributions may also request that management authority is transferred to them. This has priority over any request by the initiating creditors or the creditor committee. Should the court grant the request, the newly-authorised creditors/creditor committee may appoint new management and supervisors without the need for court approval (Articles 199c and 221i).

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

**Preventive restructuring procedure**

No insolvency practitioner is appointed and there is no supervision of the debtor.

**Compulsory settlement procedure**

Yes, an insolvency practitioner is appointed to supervise the debtor's operations until the proposed compulsory settlement is confirmed. The insolvency practitioner has the authority to act as an insolvency body in the insolvency proceedings, carrying out its role with the aim of protecting and realising the interests of creditors. In addition to supervision of the debtor's operations, the main tasks of the insolvency practitioner are to review the claims declared by the debtor's creditors, to prepare a list of all tested claims, and to conduct a vote on the proposed restructuring plan. The debtor, however, remains in possession regarding the day-to-day business (Article 97).

**Simplified compulsory settlement procedure**

No insolvency practitioner is appointed. The debtor performs all the formalities associated with the procedure.

## Is there any applicable stay or moratorium?

**Preventive restructuring procedure**

Yes, after the commencement of the procedure, no enforcement proceedings can be initiated against the debtor, and any existing enforcement proceedings are suspended. In addition, during the preventive restructuring procedure, time-barring and maturity of the (principal of) financial claims are suspended (Article 44m and 44n).

The moratorium applies generally to all claims affected by the proceedings (i.e. claims included in the list of financial claims), including secured claims, if applicable. However, by way of exemption, financial collateral within the meaning of the **Financial Collateral Act** (Official Gazette of the Republic of Slovenia No. 47/04, as amended) implementing **Directive (EC) 2002/47** on financial collateral arrangements, is not affected by the moratorium (Article 44l (5)). The law is somewhat ambiguous on the point but the generally accepted view and court practice is that financial creditors holding financial collateral can enforce such collateral (subject only to the contractual terms of such collateral) but are unable to take any enforcement action against other assets of the debtor.

After the initiation of a preventive restructuring procedure, the creditor must file for the confirmation of the financial restructuring agreement within three months (for small and medium-sized companies) or five months (for large companies). These deadlines may be extended by the court for two and three months respectively (Article 44r). This means the moratorium may in principle last for approximately five to eight months, unless it is prolonged, e.g. pursuant to the restructuring measures envisaged by the approved financial restructuring agreement or by initiation of a compulsory settlement procedure with respect to the same debtor due to the financial restructuring agreement not being approved or filed with the court within the prescribed timeframe.

**Compulsory settlement and simplified compulsory settlement procedures**

Yes, general enforcement proceedings commenced against the insolvent debtor prior to the commencement of compulsory settlement procedure are suspended on commencement of the compulsory settlement procedure (Article 132-1). Any suspended enforcement or collateralisation proceedings may be continued only on the basis of a court decision (Article 132-2).

Similarly to the preventive restructuring procedure, any moratorium arising under a compulsory settlement procedure does not affect the enforcement of financial collateral within the meaning of the Financial Collateral Act.

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

There is no protection for essential contracts and there are no provisions in the Insolvency Law to prevent termination of contracts by third parties on the grounds of entry by the debtor into any of the reorganisation procedures.

## Is new financing protected?

**Preventive restructuring procedure**

Yes. Financial claims which arose during the preventive financial restructuring have super-priority over creditors. If the preventive restructuring procedure is unsuccessful and a compulsory settlement procedure is initiated, the compulsory settlement procedure has no effect on such claims. Alternatively, if insolvent liquidation proceedings are initiated, such financial claims are considered as costs of the liquidation and are repaid before any secured or preferred claims (Article 44z). Unlike in the compulsory settlement procedure, in this procedure there are no statutory limitations on the company's operations and no particular restraints on its management or shareholders. Hence, in principle, such financial claims do not need to be authorised.

**Compulsory settlement and simplified compulsory settlement procedures**

Creditors' claims arising from loan contracts concluded following commencement of compulsory settlement proceedings are repaid from the debtor's estate before preferred claims and unsecured claims provided that the loan contracts meet the prescribed criteria and have been approved by the court (Articles 151 and 289).

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

**Preventive restructuring procedure**

Yes, the law recognises up to two separate classes of creditors: secured financial creditors, if included in the restructuring; and unsecured financial creditors (Article 44o (1)-2).

**Compulsory settlement procedure**

Yes. Generally, the Insolvency Law separates claims into four general classes: preferred claims; secured claims; ordinary unsecured claims; and subordinated claims.

However, for voting purposes there are only one or two voting classes: secured creditors (if included in the plan); and unsecured creditors. Subordinated claims, such as shareholder loans, cease to exist if compulsory settlement is confirmed, unless the debtor makes an offer to the creditors holding such subordinated claims to transfer such claims to the debtor as an in-kind contribution via an increase of share capital. Preferred claims cannot be affected by the procedure (Articles 143 and 144).

**Simplified compulsory settlement procedure**

No. The procedure can apply only to ordinary unsecured claims. Creditors therefore vote as one group.

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

**Preventive restructuring procedure**

Before a financial restructuring agreement can enter into force, it must be approved by the debtor and creditors representing at least 75 per cent by value of the total of all ordinary financial claims included in the list of recognised claims prepared by the debtor (Article 44g (2)). The list is prepared by the debtor and must be reviewed by an auditor (Article 44h (2)-2). If the agreement also affects secured financial claims the same level of consent, i.e. 75 per cent by value, applies to such group of secured creditors (Article 44o (1)-2 and (1)-3). The debtor and the creditors grant their consent to the conclusion of a financial restructuring agreement by signing the agreement (Article 44p).

**Compulsory settlement procedure**

Only creditors whose claims were approved by the insolvency practitioner may vote. The compulsory settlement plan requires the approval of creditors representing 60 per cent or more by value of all recognised and plausibly demonstrated claims (Article 205).

The portion of voting rights of a creditor when voting on the adoption of compulsory settlement is calculated based on the weighted amounts of all the recognised and plausibly demonstrated claims of creditors (Article 201).

If the compulsory settlement proposal includes compulsory restructuring of secured claims, voting is carried out in two separate classes of creditors (i.e., ordinary and secured). If the secured claims are voluntarily restructured (i.e., the proposal for compulsory settlement does not include secured claims), the holders of such secured claims vote in the class of ordinary creditors. Secured claims are appropriately weighted in such case.

**Simplified compulsory settlement procedure**

A simplified compulsory settlement is approved if both of the following majorities are reached: creditors whose total amount of claims represents at least 60 per cent of the total amount of all claims provided in the list of claims; and more than 50 per cent of all creditors by number, in each case, have voted in favour of the simplified compulsory settlement (Article 221e § 3).

## Who does the reorganisation plan bind?

**Preventive restructuring procedure**

Upon approval by the court of the preventive restructuring agreement, it becomes binding for the creditors who signed it and those whose financial claims were included in the list of financial claims (Article 44t (3)-2).

**Compulsory settlement and simplified compulsory settlement procedures**

A confirmed compulsory settlement will be binding on all claims of creditors in existence as at the date of initiation of the compulsory settlement procedure, regardless of whether the creditor has filed such claim in the proceedings (Article 212).

A confirmed compulsory settlement will not generally affect secured claims and preferred claims. However, it may affect secured claims if the proposal for compulsory settlement includes secured claims (Article 213).

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

**Preventive restructuring procedure**

The procedure can be initiated at any point, provided that relevant conditions are met, i.e. the debtor is not yet insolvent but there is a great probability that it will become insolvent within one year.

The agreement on preventive restructuring must be submitted to the court for its approval within three months (small and medium-sized companies) or five months (large companies) from the initiation of the procedure. This deadline can be extended by two and three months respectively, on the motion of the debtor and if a sufficient majority of creditors agree to such extension (Article 44r).

A moratorium arises from the moment the court publishes its resolution on the opening of the proceedings until the proceedings are finally closed. Closure of the proceedings occurs either because the proceedings are terminated or because the court resolution on the confirmation of the financial restructuring agreement becomes final (Article 44m).

Nevertheless the moratorium may be extended following closure of the proceedings if the agreement on financial restructuring is approved and such agreement envisages a deferral in the payment of creditors' claims.

**Compulsory settlement and simplified compulsory settlement procedures**

The petition to initiate a compulsory settlement or simplified compulsory settlement procedure, together with the preventive restructuring plan, must be submitted within three months from the date on which the company became insolvent (Article 39). The company's management is liable for any potential damages if the petition is not filed in a timely manner.

By way of exemption from the above, if a creditor initiated a compulsory settlement procedure over a small, medium-sized or large company, the submission of the financial restructuring plan can be postponed for three months from the initiation of the procedure (instead of from the point of insolvency). This deadline can be extended by two months (Article 221k).

Once initiated, the compulsory settlement procedure is managed by the appointed insolvency practitioner. However, the simplified compulsory settlement procedure is managed by the debtor, which must file a request for confirmation of the procedure within four months of the public announcement of its commencement (Article 221f –(1)). No time extension is possible.

A moratorium arises from the moment proceedings are initiated until the conclusion of such proceedings. If the restructuring plan is confirmed, the moratorium can be extended in the future, depending on the measures laid out in the restructuring plan.

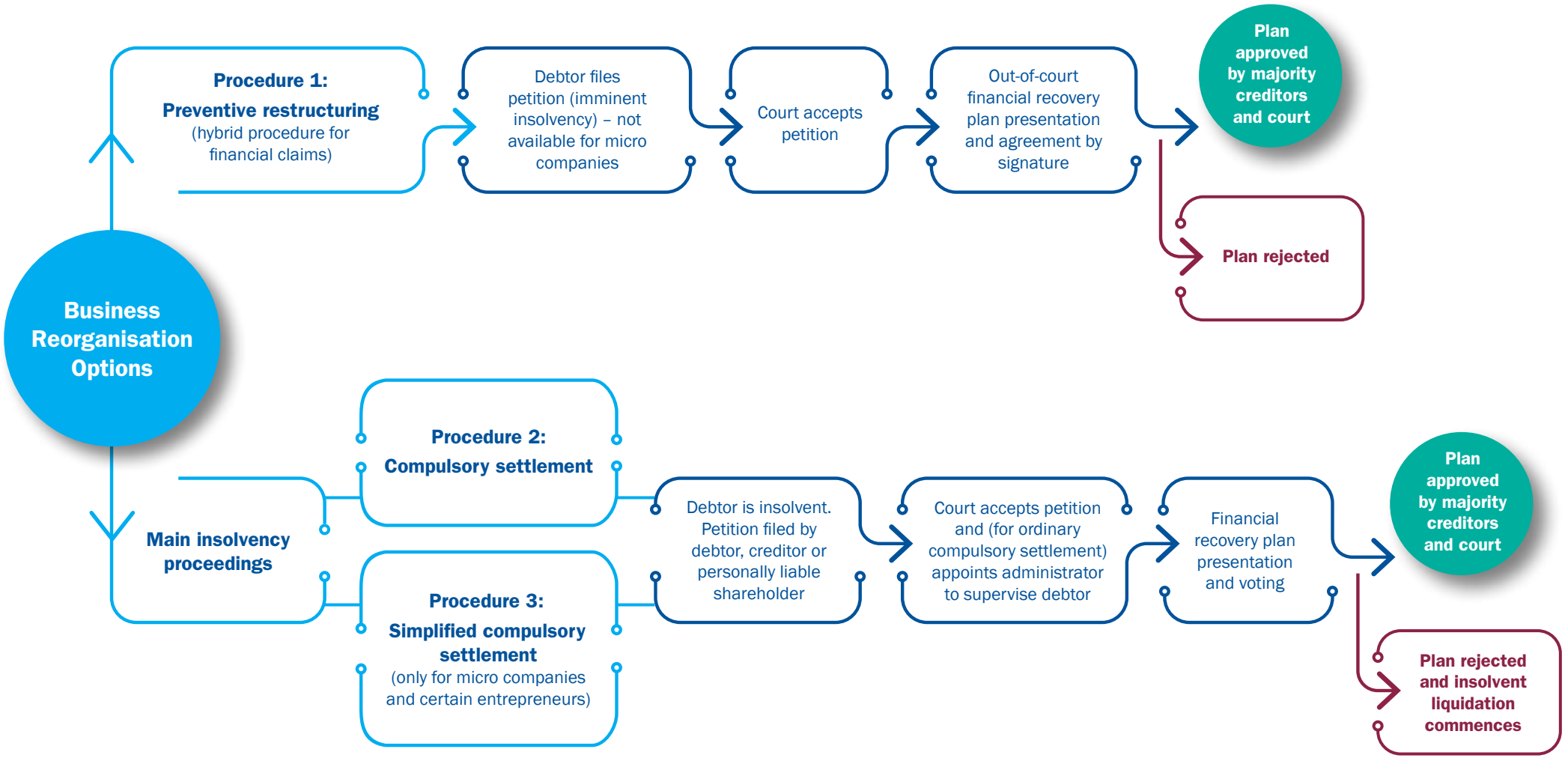
## Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

Yes, in 2007 as part of the Insolvency Law. As a member of the European Union, Slovenia is also subject to **Regulation (EU) 2015/848** on insolvency proceedings, which governs the coordination of insolvency proceedings within the EU.

## Special features/observations:

- Slovenia is one of a few economies where we invest that has a hybrid reorganisation procedure (the preventive restructuring procedure).
- Shareholders' pre-emption rights with respect to shares in the debtor are disapplied within the compulsory settlement procedure to facilitate debt-for-equity swaps.

# Overview of Slovenian 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.

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