

Business Reorganisation Assessment

📍 Tajikistan



European Bank
for Reconstruction and Development



Special thanks to:

AAA Law Offices

Centil Law Firm

Consultative Council on
Improvement of Investment
Climate under the President of the
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Part A

General Information

Macro Data

9.475	5.0%	US\$ 810	SM Tajikistani Somoni – TJS	23% (13% for enterprises producing goods)	8.0%	7.5%
Population (million) ¹	GDP growth rate ¹	GDP per capita ¹	Currency	Corporate tax rate ²	Inflation rate ¹	Unemployment rate ³

Insolvency Legislation

The primary legislative texts governing insolvency and restructuring proceedings in Tajikistan are the **Law on Insolvency (Bankruptcy)** No. 46 (the Insolvency Law) dated 8 December 2003 (as amended) and the Civil Code of Tajikistan (Part 1) dated 30 June 1999 (as amended).

Insolvency Data

There is no publicly available data on general insolvency cases. The National Bank of Tajikistan maintains a list of credit institutions in insolvent liquidation on its website available [here](#).

¹ IMF – Source as of June 2021:
www.imf.org/en/Countries/TJK

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

³ Agency on Statistics under the President of the Republic of Tajikistan – Source as of June 2021: <https://www.stat.tj/en>





Company Information

The company law framework is governed by the **Law on Limited Liability Companies No. 53**, dated 10 May 2002 (as amended), the **Law on Joint Stock Companies No. 237**, dated 5 March 2007 (as amended) and the **Law on State Registration of Legal Entities and Individual Entrepreneurs No. 508**, dated 19 May 2009 (as amended). Information about companies in Tajikistan is contained in the Unified State Register maintained by the Tax Committee of the Government of Tajikistan available **here**.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency court cases are dealt with by dedicated economic courts. The competency of the court is established based on the debtor's legal seat of operations in the case of legal entities or the residence of an individual (i.e., within the territorial jurisdiction of the relevant court).

There is no public register of insolvency practitioners for general insolvency cases and no requirement to have a special permission or authorisation to act as an insolvency practitioner in such cases. A list of holders of the certificate of special administrator and liquidator for credit institutions accredited by the National Bank of Tajikistan is maintained by the National Bank and available **here**.

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Part B

Business Reorganisation

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

No, there are no specific incentives for extrajudicial voluntary agreements. However company management, owners and shareholders are obliged to take measures to prevent the insolvency of the debtor, which can include extrajudicial voluntary agreements with creditors (Article 22). Such measures can also be accompanied by financial support from the company owners and shareholders, including state support in accordance with budget legislation (Article 23).

What is the nature and purpose of the reorganisation procedure?

There is one reorganisation procedure called external management (in-court rehabilitation) (идоракунни беруни (санатсияи суди)) which can be accessed through initiation of general insolvency proceedings by the debtor, the creditors, the public prosecutor, or tax and other state authorities.

Click here for a high level overview of the procedure.



General insolvency proceedings may lead to the liquidation of the debtor's estate or to the approval of an external management plan or an amicable agreement, an option within insolvency proceedings. Following the commencement of the insolvency case, the court establishes an observation procedure of up to one month for small and medium-sized enterprises and non-commercial entities, and up to two months for large companies. The observation procedure enables the court and the creditors to decide whether there are reasons to believe that solvency can be restored (and thus an external management procedure can be devised), if amicable agreement is possible, or if liquidation seems the only remaining option.

The purpose of the external management procedure is restoring the debtor's solvency by transferring the powers to manage the debtor's property to an external manager (Article 4). The procedure is in principle only available to large companies (Article 20), however in practice it may be introduced by the court for other companies where the judge decides the circumstances are appropriate. Measures to restore the debtor's solvency can include: re-profiling of production activities; sale of the debtor's property; payment of the debtor's debts by the owners or third parties; and other measures (Article 60).

An amicable agreement (созишномаи мусолиха) can be reached at any stage of the insolvency case and leads to termination of the insolvency case, if approved prior to opening of the insolvent liquidation procedure. If the court approves an amicable agreement during liquidation, the court decision on declaring the debtor bankrupt and opening the liquidation procedure shall not be enforced (Article 91). The amicable agreement can include provisions on postponement of payments or payment by instalments; on partial write-off of the debt; and on debt for equity swaps (Article 89).

Who can commence the process and what entry conditions apply?

Commencing the insolvency case

The debtor, the bankruptcy creditors, the public prosecutor, or tax and other state authorities can file for the debtor's insolvency (Article 26). Bankruptcy creditors are creditors having monetary claims against the debtor, excluding individuals with claims related to the debtor causing harm to their life and health, and shareholders of the debtor with respect to claims arising from such shareholding (Article 4). Debtors are considered insolvent or incapable of satisfying monetary claims and ensuring mandatory payments if relevant obligations have not been fulfilled within three months from their due date and if the total amount of liabilities exceeds the value of the debtor's property (Article 5).

The debtor has the right to file for insolvency if circumstances clearly evidence that it will not be able to fulfil its monetary obligations and make mandatory payments when they fall due (Article 7). As a general rule, in order to file for insolvency the debtor should have sufficient assets to cover the court costs. However, the debtor must file for insolvency if: satisfaction of the claims of one creditor or several creditors would lead to the impossibility of fulfilling the debtor's monetary obligations in full to other creditors; the body authorised to make a decision on the debtor's liquidation decides to file for insolvency; the body authorised by the owner of the property of a state unitary enterprise decides to file for insolvency; or if the assets of the company that is being liquidated according to company legislation are insufficient to cover the creditors' claims (Article 8).

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**

External management procedure

The external management procedure can only be accessed by large companies as a general rule (Article 20). It is initiated by the court based on the decision of the creditors' meeting. According to local counsel, the court can initiate in practice an external management procedure for smaller companies too.

Amicable agreement

The amicable agreement is not a procedure but an option within insolvency proceedings and the Insolvency Law only regulates the process for reaching an agreement. A decision to adopt an amicable agreement is made by a majority of all weighted votes of bankruptcy creditors present in the creditors' meeting. The decision has to be approved by all secured creditors (Article 87).

Is there any court involvement?

Yes, all procedures under the Insolvency Law are fully court-supervised.

Are there any hybrid reorganisation procedures?

No, there are no hybrid reorganisation procedures under the Insolvency Law.

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

Observation period

Yes, the debtor remains in possession of the company during the observation stage. However, there are certain limitations on the management of the company (Article 44).

Specifically: certain transactions, such as disposing of immovable property, or of any other property with a value exceeding 10 per cent of the balance value of the debtor's assets, along with receiving and granting loans, providing guarantees and sureties, can only be concluded with the

approval of the temporary manager (the insolvency practitioner appointed by the court). The court can also dismiss the debtor's manager if the manager does not take all actions necessary to preserve the debtor's assets or interferes with the activities of the appointed insolvency practitioner. The debtor is precluded from taking certain decisions, such as corporate reorganisation or liquidation, or payment of dividends.

External management procedure

No, once the external management procedure is initiated by the court, all functions related to management of the debtor and disposal of its assets are transferred to the external manager (the insolvency practitioner appointed by the court) (Article 52).

Amicable agreement

It depends on which of the general procedures (observation, external management or liquidation) applies, since amicable agreement is not a standalone procedure. Once an amicable agreement is approved by the court, the powers of the insolvency practitioner appointed by the court (temporary manager, external manager or bankruptcy administrator, depending on the procedure) are terminated. The external manager or bankruptcy administrator of the debtor performs the duties of the debtor's management until new management is appointed or elected (Article 91).

Is there a need to appoint an insolvency practitioner?

An insolvency practitioner is appointed in every court insolvency case. Depending on the procedure, the insolvency practitioner is referred to as a temporary manager (in the observation period), an external manager (in the external management procedure) or a bankruptcy administrator (in the insolvent liquidation procedure).

Is there any applicable stay or moratorium?

External management procedure

During the external management procedure, an automatic moratorium on creditors' enforcement applies to secured and unsecured creditors. However, certain secured creditors can be excluded from the moratorium by the court if: the object of the security is not necessary for conducting the external management; the secured creditor has not been provided with guarantees of compensation for damage in the event of a decrease in the value of the collateral; or the external management plan is not approved by the deadline (Article 53). The moratorium applies throughout the external management procedure that can last up to ten months and can be extended by up to one month (Article 51).

Amicable agreement

There is no moratorium or similar restriction for the amicable agreement as it can be negotiated only during one of the general procedures (observation period, external management or liquidation) and the rules of such procedure will apply.





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

No, there is no protection for essential contracts and no general provisions preventing termination of contracts by third parties on the grounds that the debtor has entered into insolvency proceedings including a reorganisation procedure.

Is new financing protected by law?

No protection exists for new financing granted during the proceedings or as part of any reorganisation plan.

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

No. All creditors are represented in the creditors' meeting, with only bankruptcy creditors (see definition above) having voting powers proportionate to their respective claim(s) compared to the overall claims amount (Article 12).

This applies to voting on both an external management plan and an amicable agreement.

Bankruptcy creditors can include secured creditors as well as unsecured creditors.

What are the majorities required to approve a reorganisation plan?

The weighting of votes in both procedures described below is determined by the value of creditors' claims. There is, therefore, only a requirement of majority by value and not by number.

External management procedure

A simple majority of all weighted votes of all bankruptcy creditors present at the creditors' meeting is needed to adopt an external management plan (Article 13).

Amicable agreement

All secured creditors and creditors representing a majority of votes from the total number of weighted votes of bankruptcy creditors have to approve the conclusion of the agreement (Article 87).

Who does the reorganisation plan bind?

External management procedure

The external management plan approved by the creditors' meeting binds the creditors and the debtor.

Amicable agreement

An amicable agreement approved by the court binds the debtor, the bankruptcy creditors (including the bankruptcy creditors that did not vote on entering into the amicable agreement and that voted against it) and participating third parties (Article 90).

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

External management procedure

The procedure can last up to 10 months and can be extended by up to one month (Article 51).

Amicable agreement

Amicable agreement does not have any specific timeframe.

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

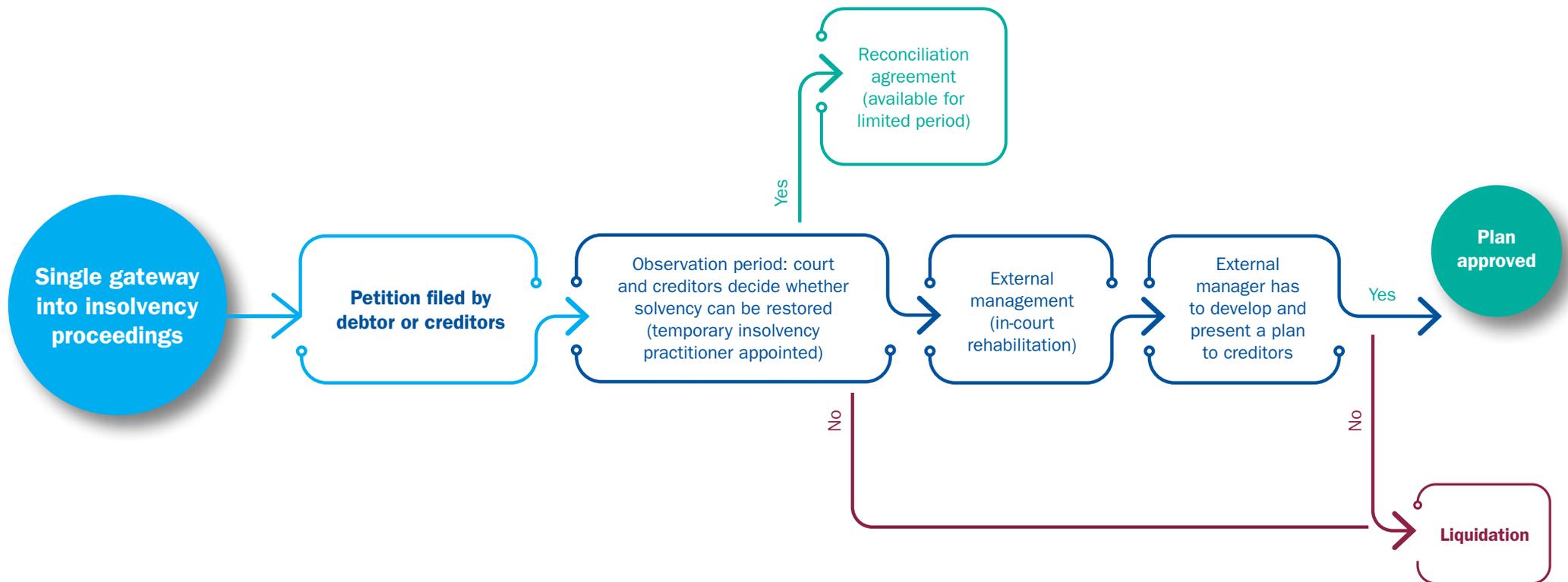
No, Tajikistan has not adopted the UNCITRAL Model Law. There are no express legal provisions on cross-border insolvency proceedings and no provisions with respect to cooperation and coordination on fundamental issues, such as recognition and enforcement of moratoria and injunctions and other measures aimed at protecting the debtor's estate.

Special features/observations:

- Like many former Soviet Union economies, Tajikistan has an amicable settlement mechanism that can be used alongside an existing insolvency procedure to reach a restructuring agreement.
- The area of bank insolvency appears to be more regulated than that of general corporate insolvency, with the National Bank of Tajikistan maintaining a list of insolvent banks and a register for insolvency practitioners authorised to take appointments in respect of insolvent banks.



Overview of Tajikistan 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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