Business Reorganisation Assessment

Turkey

European Bank
for Reconstruction and Development

Special thanks to:

Balcıoğlu Selçuk Ardıyok Kek
Dentons
Paksoy Law Firm

Part A

General Information

Macro Data

84.174	6.0%	US$ 9,330	₺ Turkish lira – TRY	22%	13.6%	12.4%
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 insolvency (bankruptcy) proceedings for legal and natural persons, other than banks and insurance companies, in Turkey is the **Code of Execution and Bankruptcy** (the Insolvency Law) (as amended, including most recently by Law No. 7327 dated 9 June 2021, which entered into force on 19 June 2021). Extrajudicial financial restructurings can be concluded in accordance with Provisional Article 32 of the Banking Law 5411 (Provisional Article 32) and under Framework Agreements endorsed by the Turkish Banking Association which are prepared according to the 2018 Regulation on Restructuring of Debts to the Financial Sector (the Financial Sector Restructuring Regulation).

There is one Framework Agreement for larger companies with exposures over TRY 100 million (approx. €10 million) dated 9 October 2019 (as amended on 8 July 2021) (**the Large Scale Framework Agreement**) and another Framework Agreement for smaller companies with exposures under TRY 100 million dated 8 November 2019 (as amended on 8 July 2021) (**the Small Scale Framework Agreement**; together with the Large Scale Framework Agreement, the Framework Agreements). According to Provisional Article 32, the Framework Agreements were valid for two years and were scheduled to expire on 19 July 2021, but were extended for an additional two years i.e. up to July 2023 by Presidential Decision No. 4299 published in the Official Gazette on 15 July 2021. The amended versions of the Framework Agreements introduced a higher debt threshold for both the Large Framework Agreement and the Small Framework Agreement. They were approved by the Turkish Competition Board and entered into force with respect to signatory creditor institutions in November 2021.

Insolvency Data

Insolvency data on the use of the concordat procedure, the main Insolvency Law reorganisation procedure, is not publicly available. However, statistics from the General Directorate of Judicial Records and Statistics of the Ministry of Justice contain data on the number of "debt collection proceedings by way of bankruptcy" initiated by creditors before the debt collection offices. The total number of the debt collection proceedings by way of bankruptcy initiated in Turkey was 766 in 2019 and 600 in 2020. Any creditor may initiate this proceeding against any debtor, therefore this data is not indicative of the insolvency status of businesses in Turkey.

Statistics on the use of the Framework Agreements from 2019 to May 2021 is available on the website of the Turkish Banking Association **here** and is summarised below. The data is compiled on the basis of information reported by the creditor institution accepting the application by the debtor to the Turkish Banking Association and is displayed on a regional as well as a sector basis.

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

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

[3] English translations of the Framework Agreements are available on the Turkish Banking Association website at: www.tbb.org.tr/en/banking-legislation/professional-codes-/91

Large Scale Framework Agreement

Period	Number of companies included in process (including group companies)	Number of companies concluding a financial restructuring contract (including group companies)	Total debt restructured under concluded financial restructuring contracts
October–December 2019	97 (48 group companies)	6 (2 group companies)	TRY 5.480 billion (approx. €540 million)
January–December 2020	226 (77 group companies)	147 (46 group companies)	TRY 27.305 billion (approx. €2.690 billion)
January–May 2021	372 (134 group companies)	202 (55 group companies)	TRY 55.630 billion (approx. €5.480 billion)

Small Scale Framework Agreement

Period	Number of companies included in process (including group companies)	Number of companies concluding a financial restructuring contract (including group companies)	Total debt restructured under concluded financial restructuring contracts
November–December 2019	21 (10 group companies)	1	TRY 10 million (approx. €985,000)
January–December 2020	45 (25 group companies)	26 (10 group companies)	TRY 294 million (approx. €29 million)
January–May 2021	71 (36 group companies)	28 (11 group companies)	TRY 323 million (approx. €31 million)

Company Information

The Turkish company law framework is governed mainly by the Turkish Commercial Code No. 6102. Information about companies (other than financial institutions) is contained in provincial trade registries that are responsible for the registration of companies and keeping related records. They are established across the 81 provinces of Turkey. The records of the registries are public and can be reviewed upon written request or via the relevant registry's website. Resolutions submitted to trade registries are published in the Turkish Trade Registry Gazette, which has a central database that can be accessed online free of charge at: **tobb.org.tr/**

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency proceedings are overseen by commercial courts and jurisdiction is determined on the basis of the debtor's main place of business. Insolvency practitioners (known as trustees, supervisors or commissioners depending on the procedure) are selected from a list created by regional committees of experts overseen by the Ministry of Justice. There are a number of regional lists and these are published separately by each committee. For example, the Istanbul list of insolvency practitioners is published **here**. To be registered on the list, insolvency practitioners must complete certain training provided by institutions authorised by the Ministry of Justice. An external candidate may nevertheless be appointed if there are no suitable insolvency practitioners on the list. If a committee of three insolvency practitioners is appointed (see below), one of these must be an independent auditor. The list of authorised independent auditors is administered by the Public Oversight Accounting and Audit Standards Authority.

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Part B

Business Reorganisation

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

Yes, under the Framework Agreements. According to Provisional Article 32 published on 19 July 2019, credit institutions that restructure their loans under the Framework Agreements benefit from tax-deductible write-off of certain non-performing loans, greater flexibility on the transfer of non-performing loans, and avoid any embezzlement risks under Article 160 of the Banking Law up until 19 July 2021 (the date on which the Framework Agreements are due to expire).

There are a number of tax-related exemptions for restructuring upon settlement agreements, but this Insolvency Law procedure is not used in practice. (See below.) The concordat procedure, which is the main reorganisation procedure in Turkey, benefits however from a number of significant related tax incentives as follows: transactions pursuant to the concordat project are exempt from the fees pursuant to the Law No. 492 on Fees and any documents prepared in relation to these transactions are exempt from stamp duty; amounts collected by creditors are exempt from the bank and insurance transactions tax payable in accordance with the Expense Taxes Law No. 6802 and loans provided to the debtor are exempt from the Resource Utilization Support Fund (Article 308/g).

What is the nature and purpose of the reorganisation procedure?

Insolvency Law reorganisation procedures

There are two judicial reorganisation procedures under the Insolvency Law: concordat (konkordato) and restructuring upon settlement (uzlaşma yoluyla yeniden yapılandırma). Concordat is a reorganisation procedure that enables a debtor to restructure its debts and avoid insolvent liquidation. Restructuring upon settlement is a hybrid reorganisation procedure for reorganising the liabilities of joint stock companies and limited liability companies. Restructuring upon settlement is not used in practice by market participants, possibly due to the lack of availability of an automatic moratorium on application to the court, in comparison with the concordat procedure that benefits from an automatic moratorium.

Framework Agreements

The Framework Agreements are designed to enable commercial loan debtors, which are facing or are likely to face temporary difficulties repaying their debts to credit institutions, to fulfil their debt repayment obligations and to continue contributing to employment. There are two Framework Agreements, one for companies with exposures under TRY 25 million (approx. €2.5 million) and another for companies with exposures above TRY 25 million.

Most Turkish credit institutions are signatories to the Framework Agreements and therefore bound by their terms. However not all credit institutions are party to the Framework Agreements, and these agreements are restricted to creditor institutions as defined under the Framework Agreements, which include banks and certain types of financial institutions. The legislative basis for the Framework Agreements is Provisional Article 32 and the Financial Sector Restructuring Regulation issued by the Banking Regulatory and Supervisory Agency.

Click here for a high-level overview of the reorganisation procedures under the Insolvency Law and the Framework Agreements.

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**

Who can commence the process and what entry conditions apply?

Insolvency Law reorganisation procedures

The concordat procedure is available for any debtor that is unable to pay its due debts or at risk of not being able to pay its debts on their due date. Creditors can initiate concordat proceedings for a debtor on the basis of a reasoned petition (Article 285). The party applying for concordat must pay a deposit and the debtor is required to submit certain documents in support of its application, including a preliminary concordat restructuring plan proposal.

The restructuring upon settlement procedure is available for a joint stock company or limited liability company that is unable to pay its mature monetary debts, or whose assets and receivables do not cover its liabilities, or that faces the imminent risk of one of these two scenarios. The debtor must demonstrate to the court that a restructuring plan has been previously negotiated and accepted by the requisite majority of its affected creditors (Article 309/m).

Framework Agreements

Debtors eligible for inclusion in the financial restructuring process are required to file an application to one of three creditor institutions with the highest amount of receivables, in the form attached to the relevant Framework Agreement, accompanied by all other information and documents required. The Large Scale Framework Agreement allows more than one debtor within a corporate group to file for a single financial restructuring procedure and applies to larger exposures above TRY 25 million (approx. €2.5 million).

Is there any court involvement?

Insolvency Law reorganisation procedures

Yes, the concordat procedure is initiated with a request by the debtor to the court and is supervised by the court. Restructuring upon settlement, which is not used in practice, is a hybrid procedure and envisages court involvement once the debtor has a restructuring plan that is supported by a majority of affected creditors, whose claims, rights or interests will be restructured by the restructuring plan.

Framework Agreements

The Framework Agreements are published by the Turkish Banking Association. No other authority is responsible for overseeing the financial restructurings conducted under these agreements. Monitoring and auditing criteria are determined in the financial restructuring contracts. The contracts envisage some oversight of the restructuring process by a consortium of creditor institutions (CCI). Additionally, in accordance with the Financial Sector Restructuring Regulation, a panel of referees is available to adjudicate any disputes arising from the failure of signatories to fulfil their obligations arising under the Framework Agreements.

Are there any hybrid reorganisation procedures?

The restructuring upon settlement procedure is technically a hybrid procedure since the debtor is required to obtain majority creditor approval to a restructuring plan before any court application and minimal court involvement is envisaged. However this procedure is not used in practice. Concordat has elements of a hybrid procedure insofar as negotiations on the concordat plan are typically conducted by the parties outside of court.

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

Insolvency Law reorganisation procedures

In both the concordat and restructuring upon settlement procedures, the debtor remains in possession. In concordat, the court immediately appoints a temporary insolvency practitioner, known as a commissioner, for a detailed examination of whether the concordat can be successful (Article 287). Where the court grants the debtor a definite concordat term in which to prepare a concordat plan, the insolvency practitioner is responsible, among other matters, for contributing to the finalisation of the concordat project and overseeing the activities of the debtor (Article 290).

In restructuring upon settlement the oversight of an insolvency practitioner, known as a supervisor, is optional.

Framework Agreements

The debtor remains in possession but is subject to certain contractual restrictions on its activities as set forth under Section VII of the Framework Agreements.

Is there a need to appoint an insolvency practitioner?

Insolvency Law reorganisation procedures

Yes, appointment of an insolvency practitioner is mandatory for the concordat procedure. As described above, a temporary insolvency practitioner is appointed on commencement of the temporary concordat term. Depending on the number of creditors and the amount of debt, the court may decide to appoint three insolvency practitioners (instead of one insolvency practitioner). One of any panel of three insolvency practitioners appointed must be an independent auditor (Article 287(3)).

The insolvency practitioners either continue in their posts or are replaced by the court where the court grants the debtor a definite concordat term in which to propose a plan to its creditors (Article 289).

Not necessarily, for restructuring upon settlement. The appointment of an insolvency practitioner, known as a supervisor, to oversee the debtor's operations is optional and is available at the request of the debtor or its creditors.

Framework Agreements

No, there is no requirement to involve any third party to oversee the debtor's operations as part of a Framework Agreement restructuring.

Is there any applicable stay or moratorium?

Insolvency Law reorganisation procedures

Yes, in concordat the court immediately grants a temporary concordat term on filing of a complete concordat application by the debtor. The temporary concordat term is three months and can be extended by an additional two months (Article 287). It is then followed by a definite concordat term of at least one year, which may be extended by a further six months (Article 289). The extended definite concordat term can itself be extended by up to six months (Article 304(2)). This exceptional extension takes place when a decision on the concordat cannot be made within the initially granted definite concordat term. Therefore, the total length of the concordat procedure and its effects can be up to two years and five months.

Both the temporary and definite concordat term result in the suspension of any enforcement action. Unless otherwise specified in the concordat plan, the definite concordat term also results in a suspension of interest for unsecured creditors. However, these provisions do not apply to the claims of creditors whose rights are secured with a pledge over immovables (secured creditors) and to employees (Articles 294(2) and 295). If the pledged asset will not be utilised under the concordat plan, or if its maintenance will be costly, the pledged asset may be sold following a court decision ((Article 295/2). The court is obliged to take the opinion of the insolvency practitioners and the consent of the board of creditors into account before deciding on the sale of such assets (Article 297(2)).

Framework Agreements

The Large Scale Framework Agreement provides that an automatic standstill applies for a reasonable period from the date of application by the debtor for financial restructuring and is binding on a debtor's credit institutions who are signatories to the Framework Agreements. The maximum standstill period may be 180 days provided that the required majority of creditor institutions approves it, as set forth in the Large Scale Framework Agreement (Section IX).

Under the Small Scale Framework Agreement, again an automatic standstill period starts once the debtor's application is accepted by one of its creditor institutions. While the agreement does not contemplate any specific time period for a standstill, it sets forth time limits for any steps to be taken during the standstill period (Section IX, Article VII).

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

Yes, with respect to the concordat procedure and for essential contracts only. Termination of contracts which involve the debtor as a signatory party and play an essential role in the continuity of its operations is prohibited.

There is no equivalent provision for the restructuring upon settlement procedure or for the Framework Agreements, which in the latter case are restricted to participating banking creditors.

Is new financing protected by law?

Insolvency Law reorganisation procedures

Yes, there is some protection for both the concordat and restructuring upon settlement procedures. With respect to concordat, agreements signed after the temporary concordat term with the permission of the insolvency practitioners (known as the concordat commissioners), can be enforced and the proceeds paid to those creditors before all other creditors, excluding secured creditors which are paid first. These agreements include loans extended by credit institutions and are recognised as debts of the insolvency estate in any subsequent insolvent liquidation procedure (Article 308/c(4)). The same priority rule applies where there is a continuous debt relation between a debtor and a creditor, such as a financial leasing agreement, and the debtor has obtained the insolvency practitioner's permission for any new liabilities arising thereunder.

There is an express provision under the restructuring upon settlement procedure that recognises that the debtor may obtain interim financing, such as receiving loans before the approval of the plan for the continuation of its operations or survival of the business, or the preservation or enhancement of the value of the assets of the estate (Article 309/ö). If security is required for the financing, it should first be obtained from any unencumbered assets of the debtor.

Framework Agreements

Yes, as set forth under Section VII on General Principles and Obligations of Parties of the Framework Agreements, any new financing under the Framework Agreements shall have priority in repayment, out of the security established under the financial restructuring contract and any amounts collected pursuant to the contract.

Under the Large Scale Framework Agreement, there is the option for existing banks that are part of the CCI to provide additional loans to the debtor in accordance with their pro rata exposures if at least two CCI banks holding 90 per cent or more of the total indebtedness agree. If this majority is not reached, some of the banks can still extend a new credit line with the approval of at least two creditor institutions holding at least two thirds of the total CCI indebtedness (Section VII/ Paragraph 11). In both cases, the new financing shall have priority of repayment.

Under the Small Scale Framework Agreement, there is no requirement to extend additional loans. However, after execution of a financial restructuring contract, one or more creditor institutions may extend new financing under the financial restructuring contract. Any such new financing shall have priority of repayment (Section VII/Paragraph 10).

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

Insolvency Law reorganisation procedures

Yes, unsecured and secured classes are separated for voting purposes under the concordat procedure, but there is no concept of further classes.

In the restructuring upon settlement procedure, creditors may be grouped into more than one class for voting purposes, where the claims in each class are substantially the same in nature (Article 309/n). There is no limit on the number of potential classes.

Framework Agreements

There is no concept of separate classes for voting purposes. Decisions on the approval of a financial restructuring plan are made by all involved creditor institutions voting as members of the CCI.

What are the majorities required to approve a reorganisation plan?

Insolvency Law reorganisation procedures

The concordat plan proposed by the debtor is required to be accepted by at least: the majority of registered creditors representing the majority of registered receivables; or one-fourth of registered creditors representing two-thirds of registered receivables. Secured creditors' receivables are not generally included in the calculation. However if the security does not cover the debt pursuant to the valuation made during the proceeding, the remaining unsecured debt will be part of the calculation. Therefore, unless security held by a secured lender does not cover its receivables, the secured lender will not be able to vote on the restructuring plan. Certain privileged creditors' receivables and employee claims are not included in the calculation of the quorum.

Although Article 308/h of the Insolvency Law provides the debtor with a right to invite secured creditors to negotiate a separate concordat plan, this right is not exercised in practice since secured creditors are not affected by the automatic stay. The concordat restructuring plan thus only includes secured creditors with respect to the unsecured portion of their debts.

With respect to the restructuring upon settlement procedure, each class of creditors must accept the plan by the requisite majority of at least two-thirds by value (Article 309/m).

Framework Agreements

A cram down mechanism exists whereby dissenting creditor institutions can be forced to agree to the terms of a restructuring if two-thirds by value of the debtor's creditor institutions enter into a financial restructuring contract. This is subject to certain higher thresholds for specific restructuring measures, such as new financing (see above). (Section VI/ Paragraph 1(c) of Large Scale Framework Agreement and Section VI/Paragraph 1 of Small Scale Framework Agreement.)

Who does the reorganisation plan bind?

Insolvency Law reorganisation procedures

Once approved by the court, the concordat restructuring agreement binds all creditors, except for: creditors secured by a pledge on movables and/or a mortgage; creditors with public claims within the scope of the Law on Collection of Public Credits No. 6183; and employees. If the court rejects the concordat request, the company is declared bankrupt, subject to fulfilment of the conditions set out in Article 308.

A restructuring upon settlement plan binds all affected creditors.

Framework Agreements

All credit institutions that have signed or acceded to the Framework Agreements are bound by any financial restructuring contract concluded under these agreements and approved by the requisite majority of two-thirds by value of credit institutions that are creditors to the debtor.

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

Insolvency Law reorganisation procedures

The concordat procedure and its effects can range for up to two years and five months (see above). There is no maximum time period for implementation of the concordat plan.

There is no understanding of the potential length of the restructuring upon settlement procedure due to a lack of detail in the Insolvency Law and absence of practice.

Framework Agreements

The Framework Agreements provide a flexible, contract-based mechanism for financial restructuring. There is no set time period or deadline for the procedure, but the standstill that arises with respect to credit institutions that have signed the Large Scale Framework Agreement upon acceptance of an application by the debtor can last up to 180 days. The Small Scale Framework Agreement does not contemplate any specific time period for a standstill. However, it sets forth time limits for any steps to be taken during the standstill period.

Once the financial restructuring contract is executed and provided that the debtor performs its obligations, no execution proceedings can be initiated against the debtor and no ongoing proceedings can be continued, except where this may lead to loss of rights, due to either a statute of limitations or prescription periods.

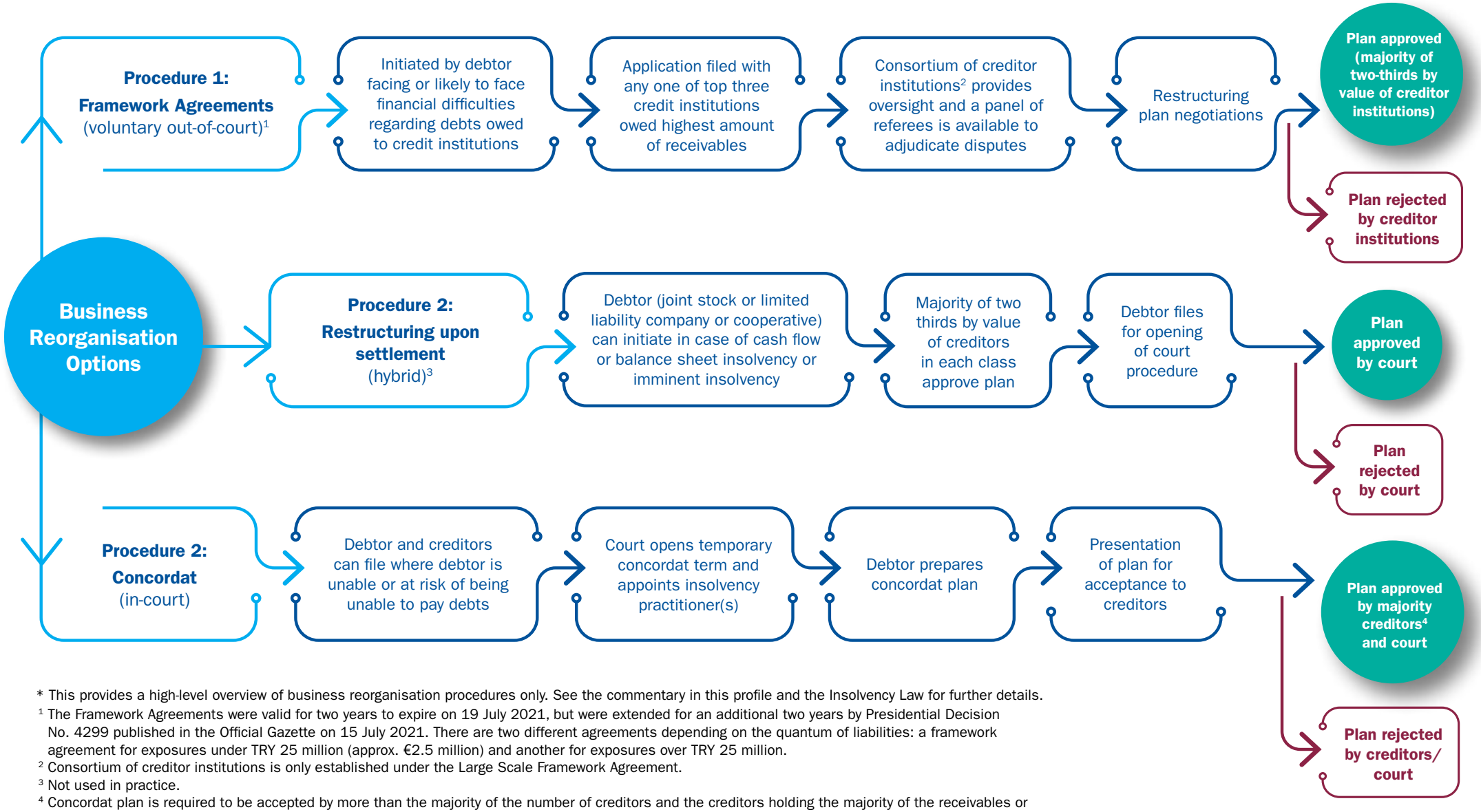
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, the UNCITRAL Model Law has not been adopted and there are no provisions on cross-border insolvency in the Insolvency Law. An insolvency decision relating to a foreign company headquartered outside of Turkey with a branch located in Turkey will only be effective for the Turkish branch. For companies incorporated in Turkey, any insolvency proceeding will include assets located outside of Turkey and such assets should be recorded in the ledger, pursuant to Article 40 of the Ordonnance on the Application of the Code of Execution and Bankruptcy.

Special features/observations:

- The concordat procedure was rarely used in Turkey until March 2018 when major changes were introduced to the country's legal framework. These changes cancelled the postponement of bankruptcy procedure, which had been the main in-court restructuring method and facilitated the application process for a concordat. Concordat is now the main reorganisation procedure in Turkey.
- Most multilateral bank-led restructurings are conducted on an extrajudicial contractual basis under the Framework Agreements sponsored by the Turkish Banking Association.

Overview of Turkish Business Reorganisation Procedures*



* This provides a high-level overview of business reorganisation procedures only. See the commentary in this profile and the Insolvency Law for further details.

[1] The Framework Agreements were valid for two years to expire on 19 July 2021, but were extended for an additional two years by Presidential Decision No. 4299 published in the Official Gazette on 15 July 2021. There are two different agreements depending on the quantum of liabilities: a framework agreement for exposures under TRY 25 million (approx. €2.5 million) and another for exposures over TRY 25 million.

[2] Consortium of creditor institutions is only established under the Large Scale Framework Agreement.

[3] Not used in practice.

[4] Concordat plan is required to be accepted by more than the majority of the number of creditors and the creditors holding the majority of the receivables or one fourth of the number of creditors and creditors holding at least two thirds of the receivables.

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