Business Reorganisation Assessment

Turkmenistan

European Bank
for Reconstruction and Development

Special thanks to:

ACT Law Firm

Sheguns & Partners

Part A

General Information

Macro Data

5.944	4.6%	US$ 9.03	T Turkmenistani Manat – TMT	8%	8.0%	4.38%
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 text governing insolvency and restructuring proceedings of legal entities and entrepreneurs is the **Law of Turkmenistan on Bankruptcy** No. 861-XII (the Insolvency Law) dated 1 October 1993 (as amended).

Insolvency Data

Some statistical data on insolvency proceedings (such as the number of insolvency liquidations) is collected by the Agency for State Registration of Legal Entities and Investment Projects, which sits under the Ministry of Finance and Economy of Turkmenistan. Such data is not publicly available. Local counsel has advised that the number of insolvency proceedings is very low.

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

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

[3] **World Bank - Source as of August 2021:** data.worldbank.org/indicator/SL.UEM.TOTL.ZS?locations=TM

Company Information

The company law framework is governed by the **Civil Code** dated 17 July 1998 (as amended), the **Law on Enterprises** No. 28-II, dated 15 June 2000 (as amended) and the **Law on Joint Stock Companies** No. 400-I, dated 23 November 1999 (as amended). The register of companies is not publicly available.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency court cases are dealt with by economic (arbitration) courts. The jurisdiction of the court is established based on the debtor's legal seat of operations (i.e., within the territorial jurisdiction of the relevant court) for companies and place of registration for entrepreneurs.

The authority involved in insolvency proceedings (other than the courts) is the Ministry of Finance and Economy of Turkmenistan which operates through the Agency for State Registration of Legal Entities and Investment Projects. The register of insolvency practitioners is not maintained.

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Part B

Business Reorganisation

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

There are no specific incentives to encourage a debtor and its creditors to conclude a financial restructuring based on an extrajudicial voluntary agreement.

What is the nature and purpose of the reorganisation procedure?

There are a number of reorganisation options described below. These include: an extra-judicial procedure which may result in reorganisation of the debtor and the administration procedure, the rehabilitation procedure and amicable settlement within main court supervised insolvency proceedings. **Click here** for a high-level overview of the Turkmen business reorganisation framework.

Prior to launching court-supervised insolvency proceedings, the debtor can initiate the extra-judicial procedure (kazyýet çäreleri däl çäreler). The procedure is conducted fully out-of-court by means of negotiations with creditors in order to eliminate the threat of insolvency. It may lead to: an agreement with all or part (at least two-thirds) of the creditors to defer payments; voluntary liquidation of the debtor company under the supervision of creditors; or an amicable agreement (Article 8).

There is one gateway into insolvency proceedings which can be initiated by the debtor or the creditor (Article 11). This may lead to: the liquidation of the debtor's estate; the approval of an administration plan or a rehabilitation agreement; or an amicable agreement. Upon the commencement of the insolvency case, the court requests relevant information on the financial condition of the debtor and on existing creditors' claims, and within a month summons a hearing with the debtor, creditors, representatives of banks, financial and tax authorities at the place of registration of the debtor, and state property authorities (in the case of state participation in the property of the debtor) to decide whether any of the reorganisation procedures can be devised or if liquidation seems the only remaining option. The court may appoint an independent expert in order to determine whether to rule on reorganisation.

The purpose of the administration (bergidaryň emlägini administratiw taýdan dolandyrmak) procedure is restoring the debtor's solvency, reaching an amicable agreement with creditors or selling a part of debtor's property to continue operations and it involves transferring the powers to manage the debtor's property and business operations to an insolvency practitioner (administrator) (Article 19).

The rehabilitation procedure (bergidaryň batyp galmagynyň öňüni almak çäresi) is aimed at preventing liquidation by providing financial assistance to the debtor by the owners (shareholders) or a third party (Article 22) without transferring the powers to manage the debtor's property and business operations to an administrator.

An amicable agreement (barlyşyk ylalaşygy) can be reached at any stage of the insolvency case (i.e., during the administration, rehabilitation or liquidation procedures) in order to terminate the proceedings by reaching an agreement between the debtor and its creditors (Article 39).

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?

Extra-judicial procedure

The extra-judicial procedure can be commenced solely by the debtor if there is a threat of insolvency (Article 8).

Commencing the insolvency case

The insolvency case can be commenced upon the application of the debtor or a creditor if: the debtor is unable or refuses to fulfil the terms of the debt obligation in a timely manner and in all respects; the debtor has failed to pay within two months of the demand for payment; or if the amount of the debt exceeds the value of the debtor's assets (Article 11).

Administration procedure

The decision on commencing the procedure is taken by the court at the request of the debtor, shareholders (owners), or creditors (Article 19). The request should include the justification for launching the procedure and the identity of the proposed administrator. The court launches the procedure if: the debtor cannot pay for its obligations or will not be able to pay in the near future, given the state of the debtor's financial and economic activities; and there is a real opportunity to achieve at least one of the administration purposes mentioned above (restoring the debtor's solvency, reaching an amicable agreement with creditors or selling a part of debtor's property to continue operations).

Rehabilitation procedure

The decision on commencing the procedure is taken by the court at the request of the debtor or shareholders (owners) (Article 16). Launching the procedure requires submitting requests/applications for participation in the procedure by the shareholders of the debtor, its creditors, employees or interested third parties. This submission is made either together with the request to launch the procedure to the court, or within 30 days following the launch of the procedure and publication of the notification about the open call to participate in the rehabilitation. The court considers the applications submitted, followed by a meeting of admitted applicants where an agreement should be signed. The agreement should ensure that the claims of all creditors are satisfied once the rehabilitation is completed, specify its expected duration and determine the liabilities owed to creditors (Article 22). If no applications were received by the court during the open call, the court reverts its decision on launching the procedure.

Amicable agreement

The amicable agreement is not a procedure but an option within insolvency proceedings and the Insolvency Law only regulates the formalities for reaching an agreement. A decision to adopt an amicable agreement is made by a majority of at least two-thirds of all weighted votes of creditors from the total number of weighed votes of creditors (Article 40). The amicable agreement can only restructure the debts of creditors of the fourth priority ranking and lower (therefore, claims in relation to the debtor's liability for causing harm to person's life or health; claims of employees of the debtor for their services, pension arrears and allowances; and claims of the state are excluded, as well as secured claims that are to be paid out of turn – all of these claims need to be paid prior to submitting the amicable agreement for the court approval).

Is there any court involvement?

Yes, except for the extra-judicial procedure (a completely out-of-court procedure), all procedures under the Insolvency Law are fully court-supervised procedures.

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?

Yes, the debtor remains in possession of the company throughout the extra-judicial and rehabilitation procedures but not during the administration procedure, where the administrator displaces the debtor's management as explained below.

Administration procedure

No, once the procedure is initiated by the court, all functions related to management of the debtor are transferred to the insolvency practitioner (administrator) appointed by the court (Articles 19 and 20). The insolvency practitioner needs court approval to dispose of the assets that are subject to pledge. If the administration procedure is completed successfully, the court approves the appointment by the insolvency practitioner of the management of the debtor for the next three years (Article 20).

Rehabilitation procedure

Yes the debtor remains in possession of the company throughout the procedure, but the rehabilitation participants appoint an insolvency practitioner to supervise the conduct of rehabilitation (Article 22).

Amicable agreement

The amicable agreement is an option within insolvency proceedings and is not a separate procedure. Thus it has no impact on whether the debtor stays in possession.

Is there a need to appoint an insolvency practitioner?

Yes, for both the administration and rehabilitation procedures. During the administration procedure, an administrator needs to be proposed by the debtor or the creditors (Article 19). During the rehabilitation procedure, the participants appoint an insolvency practitioner to supervise the course of the procedure (Article 22).

However, the extra-judicial procedure does not require appointment of an insolvency practitioner. Appointment of an insolvency practitioner is not applicable to amicable agreement since this is an option within insolvency proceedings and is not a separate procedure.

Is there any applicable stay or moratorium? If so, please describe whether automatic, length of moratorium and what it covers.

Extra-judicial procedure and rehabilitation procedure

No, during these procedures, there is no explicit provision that would restrict creditors from enforcing their claims.

Administration procedure

Yes, an automatic moratorium on creditors' enforcement actions is in place for the period of the procedure, but this may not exceed 18 months (Articles 19 and 20). It applies to both secured and unsecured creditors.

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

No, there is no protection against termination of contracts by third parties as a result of the debtor entering into an insolvency procedure, including a reorganisation procedure, and there are no provisions in the Insolvency Law to ensure continuity of essential contracts for the day-to-day operations of the debtor. essential contracts.

Is there a provision for new financing?

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, and have voting powers proportionate to their claims compared to the overall claims amount. They vote as one group.

The Insolvency Law only sets out the priority order of the creditors' claims for the purposes of distributing of liquidation proceeds (Article 34). Secured creditors' claims are settled out of turn (Article 33).

The order of priority is as follows: claims of persons in relation to the debtor's liability for causing harm to their life or health; claims of employees of the debtor for their services, pension arrears and allowances for three years before the initiation of liquidation proceedings; claims of the state for payment obligations that arose during the year prior to the commencement of the liquidation proceedings; claims of creditors who do not have priority in the distribution of the estate subject to liquidation; claims of the holders of shares in the labour collective scheme; all other claims; and claims of the debtor's shareholders.

What are the majorities required to approve a reorganisation plan?

Weighting of votes

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

Extra-judicial procedure

In order to adopt an agreement on deferral of payments in the extra-judicial procedure, participation of at least two-thirds of creditors by value of claims is required (Article 9).

Administration procedure

A majority of two-thirds of all weighted votes of all creditors present in the creditors' meeting is needed to adopt an administration plan (Article 20).

Rehabilitation procedure

For approval of the rehabilitation agreement, all participants in the procedure (i.e. parties providing financial assistance to the debtor) have to sign the agreement (Article 22).

Amicable agreement

For approval of the amicable agreement, a majority of two-thirds of all weighted votes of all creditors present at the creditors' meeting is needed. Furthermore, dissenting creditors may not be worse off under the agreement than consenting creditors of the same rank (Articles 39 and 40).

Who does the reorganisation plan bind?

Extra-judicial procedure

If an agreement on deferral of payments is reached in the extra-judicial procedure, it binds the debtor and the participating creditors.

Administration procedure

The administration plan approved by the creditors' meeting binds the creditors and the debtor/administrator.

Rehabilitation procedure

For approval of the rehabilitation agreement, all participants in the procedure (i.e. parties providing financial assistance to the debtor) have to sign the agreement (Article 22).

Amicable agreement

An amicable agreement approved by the court binds the debtor and all creditors (Article 42).

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

Extra-judicial procedure

There is no specific timeframe for the extra-judicial procedure.

Administration procedure

The procedure can last for up to 18 months (Article 19), and an automatic moratorium on creditors' enforcement actions is in place for this period.

Rehabilitation procedure

The procedure can last for up to 18 months, subject to extension by the court for up to six months on the participants' request (Article 22).

Amicable agreement

The availability of an amicable agreement does not have any specific timeframe. However, it has to be concluded within the timeframe of the applicable insolvency procedure.

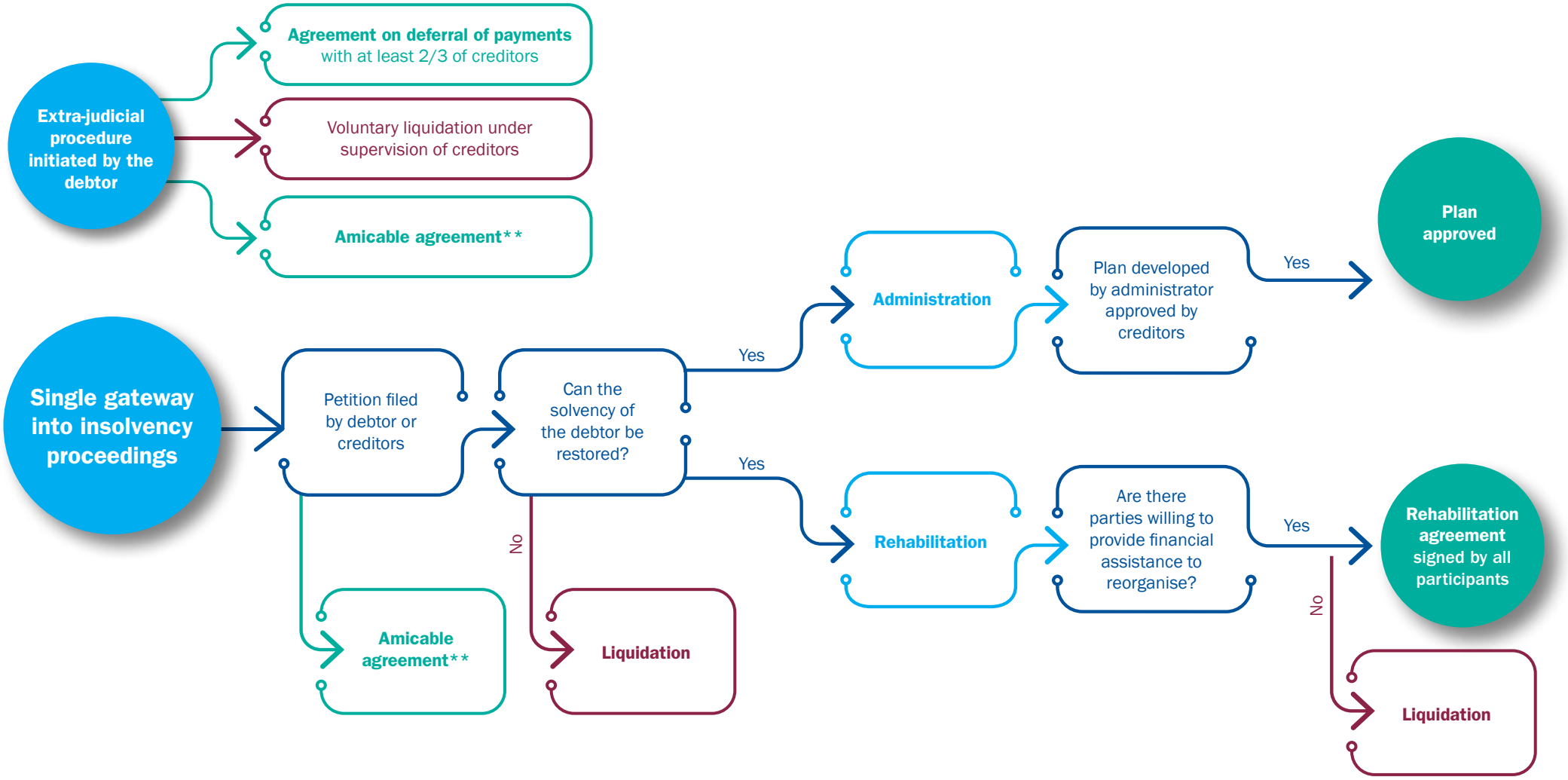
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, Turkmenistan 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 or injunctions and other measures aimed at protecting the debtor's estate.

Special features/observations:

- Like many former Soviet Union economies, Turkmenistan has an amicable settlement mechanism that can be used alongside the existing insolvency procedure to reach a restructuring agreement. Both Azerbaijan and Turkmenistan have the possibility of fully out-of-court administered insolvency proceedings.
- There appears to be no regulated insolvency practitioner profession, and appointments in insolvency cases are determined by the court on a case-by-case basis based on the suggestions of the debtor or its creditors and on the candidate's previous management experience (in the case of the administration procedure).

Overview of Turkmenistan Business Reorganisation Procedures*



* This provides a high-level overview of the business reorganisation procedure. See the commentary in this profile and the Insolvency Law for further details, including with respect to moratoria and voting thresholds.

**Can be reached at any stage, including administration, rehabilitation and liquidation procedures

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