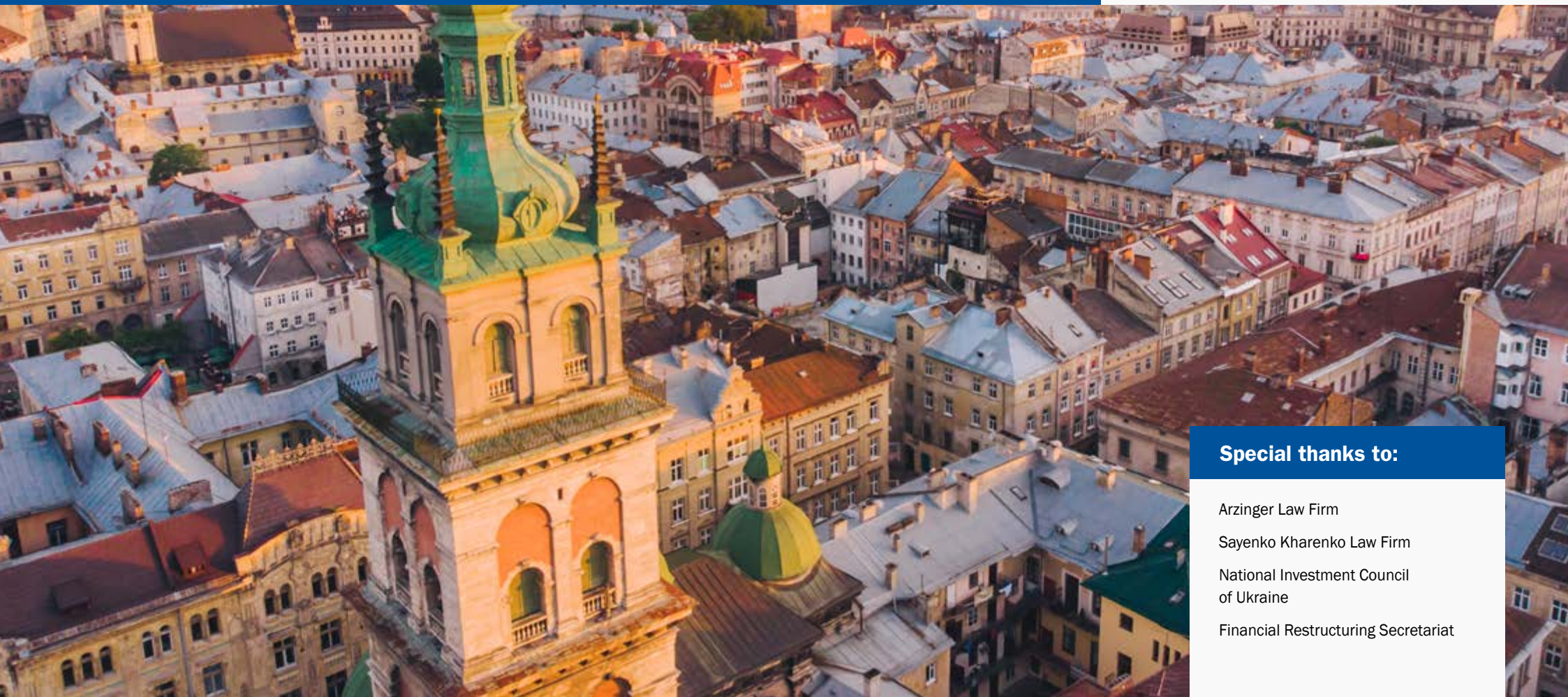
# Business Reorganisation Assessment

Ukraine

European Bank
for Reconstruction and Development




**Special thanks to:**

Arzinger Law Firm

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National Investment Council of Ukraine

Financial Restructuring Secretariat

Part A

# General Information

## Macro Data

| 41.483 | 4.0% | US$ 3,980 | ₴ Ukrainian hryvnia – UAH | 18% | 7.9% | 8.6% |
|---|---|---|---|---|---|---|
| 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 and restructuring proceedings of legal entities, entrepreneurs and natural persons in Ukraine is the **Code of Ukraine on Bankruptcy Proceedings** No. 2597-VIII (the Insolvency Law) dated 18 October 2018, which became effective on 21 October 2019.

Private out-of-court restructurings are governed by the provisions of the Civil Code, the Commercial Code, the Civil Proceedings Code, the Commercial Proceedings Code and employment and securities law. In addition, Ukraine has a voluntary framework for financial restructuring of legal entities: the **Law of Ukraine "On Financial Restructuring"** No. 1414-VIII (the Financial Restructuring Law) dated 14 June 2016, as amended. The Financial Restructuring Law will expire on 19 October 2022, if not extended by the Ukrainian parliament.

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

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

### Insolvency Data

Information on insolvency proceedings is published on the website of the **Cassation Commercial Court of the Supreme Court**. There is no official consolidated data on the total number of proceedings on an annual basis.

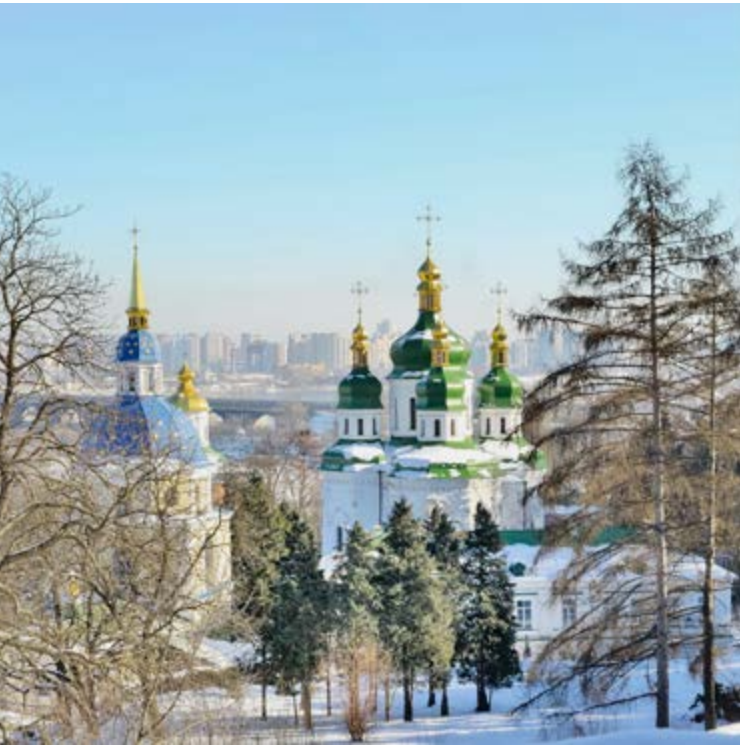
Based on manual research, from 2011 until February 2021, 2,578 insolvency cases were commenced for legal persons, including in-court rehabilitation and liquidation proceedings. Over the same time period, 101 pre-insolvency rehabilitation cases were initiated. As at 15 February 2021, there were 58 ongoing pre-insolvency rehabilitation proceedings, 91 ongoing in-court rehabilitation proceedings and 2,050 liquidations proceedings.

With respect to a search of the website for pre-insolvency rehabilitation plans, this revealed that two plans were accepted for consideration by the Ukrainian courts in 2018; three plans in 2019; five plans in 2020; and eight plans from 1 January to 31 July 2021. However, it did not reflect whether each plan was approved by court, its status and further details of the pre-insolvency rehabilitation procedure. This information may be looked up manually based on the relevant case number in the State Judgments Register. A similar search may be made to obtain information on the total number of liquidations and in-court rehabilitation proceedings for relevant years. However, such a search would not reflect the status (closed or ongoing) of the proceedings as of the date of the search. This information would also have to searched for manually by case number in the State Judgments Register.

The Secretariat responsible for overseeing the Financial Restructuring Law collects data on the number of voluntary financial restructuring cases and publishes it on its website **here**. From May 2017 until 30 July 2021, 46 cases of financial restructuring procedure were initiated for a total amount of claims of UAH 72,336,106,046.30 (approximately €2.3 billion). Out of the 46 initiated cases, two are still ongoing representing a total amount of claims of UAH 710,664,211.81 (approximately €22.2 million). The total amount of successfully restructured claims to date under the framework is UAH 71,625,441,834.49 (approximately €2.2 billion).

## Company Information

The Ukrainian company law framework is governed by the Commercial Code, the Civil Code, the Law on Joint Stock Companies, the Law on Commercial Companies, the Law on Limited Liability and Additional Liability Companies and the Law on Joint Venture Companies. Information about companies in Ukraine is available in the **Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations of Ukraine** held and administered by the Ministry of Justice. The register is available online **here** and open to public consultation. Furthermore, official statistical data regarding the overall number of registered legal entities in Ukraine can be found on the site of the **State Statistics Service of Ukraine**.



## Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency courts are commercial courts. Jurisdiction is determined by the registered seat of the debtor in the case of a legal entity or place of residence with respect to an entrepreneur. The **Department for Bankruptcy** (Department), which sits under the Ministry of Justice, is the main regulatory body for insolvency matters with respect to private businesses and state-owned enterprises. The Department is responsible for the certification (authorisation) and training of insolvency practitioners, also known as bankruptcy trustees. The Department maintains the **Unified Registry of Insolvency Practitioners of Ukraine**, which is an integral part of the United State Register of Legal Entities, Individual Entrepreneurs and Public Organizations and in which each person certified to exercise the profession of an insolvency practitioner is registered. There is an entry examination for the insolvency practitioner profession, approved by Order of the Ministry of Justice **No. 2535/5** dated 13 August 2019. The Department is also responsible for supervising the activities of insolvency practitioners, verification of their activities, and their compliance with the Insolvency Law in accordance with the procedure set out in the Order of the Ministry of Justice **No. 3928/5** dated 6 December 2019.

The Insolvency Law provides a Unified Court Information – Telecommunication System (the UCITS) which has not yet been implemented. This system will allow the court to appoint an insolvency practitioner from among three candidates automatically chosen from the list of insolvency practitioners included in the Unified Registry of Insolvency Practitioners of Ukraine.

A number of institutions and bodies have been set up to implement the Financial Restructuring Law and derive their administrative powers and authority from the Law.

These include a **Supervisory Board**, which is comprised of public and private sector representatives, including from the National Bank of Ukraine, the Ministry of Economic Development and Trade, the Ministry of Finance, the Ministry of Justice, financial institutions and others. The major role of the Supervisory Board is to administer, coordinate and supervise the financial restructuring procedure. A Secretariat, established by the Supervisory Board, provides information, analytics, and organisational and administrative support for the financial restructuring procedure. The Secretariat is not directly involved in the negotiations between the parties to the financial restructuring procedure, but rather ensures compliance with all procedural steps of the restructuring and notifies them of upcoming deadlines and meetings. It reports on the progress and results of the financial restructuring procedure to the Supervisory Board. The Secretariat is assisted by the **Independent Association of Banks of Ukraine** (the NABU), which provides technical, administrative and organisational support for the activities of the Secretariat. An **Arbitration Committee** handles and oversees the arbitration of disputes arising between the parties using the financial restructuring procedure, acts as the body that appoints the sole arbitrator and ensures application of the arbitration rules. None of the Supervisory Board, the Secretariat nor the Arbitration Committee has a legal personality. A **Framework Agreement** established by the National Bank coordinates the actions of financial institutions under the Financial Restructuring Law. The regulations of the Secretariat, the arbitration rules, sample documents for the financial restructuring procedure (e.g. the form of application, standstill agreement, etc.) and the Framework Agreement are all available online **here**.

Continue to Part B →

Part B

# Business Reorganisation

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

In Ukraine there are three different reorganisation procedures: the pre-insolvency rehabilitation procedure (Санація боржника до відкриття провадження у справі про банкрутство); the in-court rehabilitation procedure (Процедура санації боржника) which is part of the main insolvency proceedings, both as described in the Insolvency Law; and the financial restructuring procedure (Процедура фінансової реструктуризації) contained in the Financial Restructuring Law. **Click here** for a high-level overview of these reorganisation procedures.

The Financial Restructuring Law and related provisions in the Tax Code of Ukraine provide a wide range of special benefits that apply to financial restructuring transactions that are concluded under the framework and registered with the Secretariat. These include tax exemptions on restructured debt and asset sales, restructuring of tax claims (write-offs and deferrals), VAT exemptions on asset sales and supplies of goods, and special transaction safeguards to protect the parties against challenges after the restructuring agreement has been executed.

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

**Financial restructuring framework**

This is an extra-judicial, consensual/voluntary framework, which relies on good faith, fair dealing and cooperation among all parties involved to achieve a mutual agreement supporting the viability of a distressed company through the broadest range of measures. Such measures include, but are not limited to, loan rescheduling, partial debt forgiveness, debt-to-equity conversions, new capital investment and asset sales/transfers.

The financial restructuring procedure can apply to business operations and assets of a debtor located inside or outside Ukraine, as well as all claims against a debtor including those governed by foreign laws (Article 2 of the Financial Restructuring Law). The debtor, its related parties, and involved creditors, meaning creditors whose claims can be restructured under this procedure, participate in negotiations regarding the restructuring of the claims held by involved creditors (Articles 1 and 17). The financial restructuring plan is prepared by the debtor in cooperation with creditors which are related parties of the debtor (if any), the involved creditors and investors (if any) (Article 25).

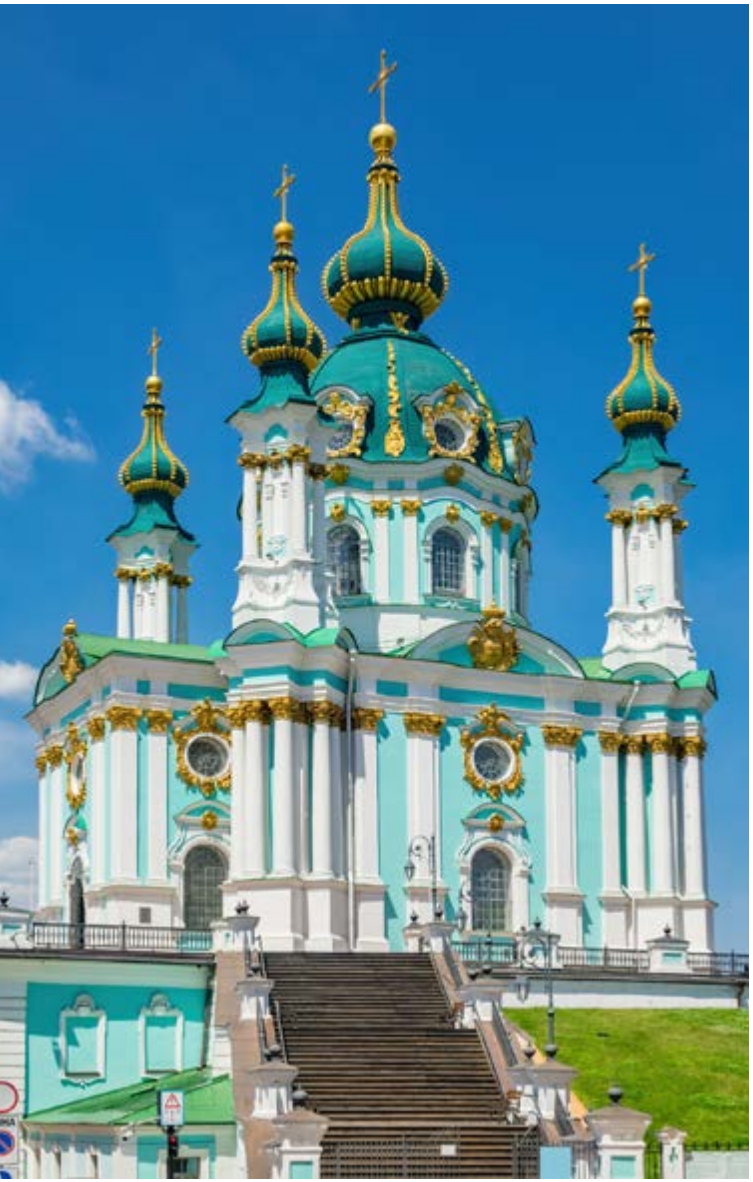
**Pre-insolvency rehabilitation procedure**

This procedure supports measures to restore the solvency of a debtor which is at risk of insolvency. It may be initiated by the debtor upon the decision of the debtor's owner or shareholder (Article 5.1 of the Insolvency Law) and implemented by the debtor's owner or shareholder, a lender, or other parties, with a view to preventing the debtor's insolvency (Article 4.5). These parties can grant financial assistance for the repayment of the debtor's debts to creditors, including obligations to pay taxes and duties, insurance payments on any compulsory state pension and other social insurance (Article 4.3).

**In-court rehabilitation procedure**

This procedure is a rescue stage during main insolvency proceedings aimed at restoring the solvency of the debtor. It involves a system of measures to prevent the insolvency and liquidation of the debtor, which is aimed at improving the financial and economic situation of the debtor, as well as discharging in full or in part claims of creditors by restructuring the business, debt and assets and/or changing the organisational, legal and production structure of the debtor (Article 50 of the Insolvency Law).

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?

**Financial restructuring framework**

The financial restructuring procedure may be commenced only by a debtor which is suffering financial distress, but whose business can be considered viable. The financial distress is defined as the inability of the debtor to pay its indebtedness to at least one financial creditor as it falls due. The debtor commences proceedings by submitting a written application to the Secretariat. A debtor may not file an application for financial restructuring within 18 months of the commencement of a financial restructuring procedure under an earlier application or after the commencement of a pre-insolvency rehabilitation procedure or an in-court rehabilitation procedure (Articles 4 and 18 of the Financial Restructuring Law).

The restructuring application shall include: a written consent of the debtor to submit any disputes to arbitration under the Arbitration Rules; a reference to the availability of the consent of the involved creditor to restructuring; information with confirmation that there is no open proceeding against the debtor in a bankruptcy case or rehabilitation; the restructuring consent of involved creditors signed by one or more financial institutions, including the restructuring consent of the enforcement authority; lists of involved creditors, secured creditors, related parties; and a list of any pending enforcement proceedings (Article 18 of the Financial Restructuring Law). None of the involved creditors providing consent may be a related party to the debtor that holds at least 50 per cent of the total amount of claims of financial institutions to the debtor, excluding liabilities to the related parties.

The procedure contains some restrictions on which creditors may participate. All financial institutions that are creditors of the debtor can participate, i.e. institutions which are financial according to the Law of Ukraine “On Financial Services and the State Regulation of Financial Services Markets”, international financial institutions, as well as any foreign legal entity which is a financial institution according to the legislation of the country of its incorporation. Other creditors, secured and unsecured, can also participate in the plan provided that at least one financial institution is involved. The Ukrainian Deposit Guarantee Fund, the state banks, and banks with state participation, are eligible to participate in the financial restructuring plan (Articles 5 and 8). Furthermore, new investors wishing to invest in the debtor’s business may participate in the financial restructuring plan (Articles 1 and 25).

**Pre-insolvency rehabilitation procedure**

A pre-insolvency rehabilitation procedure may be commenced only by a debtor in financial difficulties that is not yet insolvent or declared insolvent, following the decision of the shareholders. To initiate this procedure, a debtor must compile a creditor list, analyse its own financial condition, prepare a rehabilitation plan and present the latter for voting at the meeting of creditors. Secured creditors can also participate in the procedure (Article 5 of the Insolvency Law).

**In-court rehabilitation procedure**

This procedure is only available following the opening of the main insolvency proceedings, which begin with an asset management phase. The main insolvency proceedings may be initiated by the debtor or creditors. A creditor needs to demonstrate to the court that the debtor is unable to discharge its debts as they fall due. The debtor must also file for insolvency in the event of threatened insolvency, i.e. if payment of a debt to one creditor will result in impossibility of payment to all other creditors. The debtor also needs to obtain a shareholder’s resolution approving its application to the court and should have sufficient funds to cover expenses related to the conduct of the insolvency proceedings. If insolvency proceedings are commenced upon application from a creditor, the court will assess at the preparatory hearing whether the debtor is in a position to discharge its debts as they fall due (Article 34 of the Insolvency Law).

## Is there any court involvement?

**Financial restructuring framework**

No, the framework is extra-judicial. However, it is administered by the Secretariat (the body responsible for administration) of the Financial Restructuring Law. The Secretariat, under the supervision of the Supervisory Board, provides administrative support, ensuring that the parties comply with procedural requirements, and provides notices to involved creditors and other parties at various stages of the proceedings. The Secretariat takes no part in restructuring negotiations nor in resolving disputes between parties. An arbitration committee is available to resolve any disputes arising between the parties.

Financial institutions which participate in the financial restructuring procedure are party to a framework agreement overseen by the National Bank of Ukraine.

**Pre-insolvency rehabilitation procedure**

Yes, but court involvement is very limited. The plan is pre-approved by participating creditors and then approved by the court, within five days following creditors' approval of the plan, on the best interests of creditors' basis, meaning that the plan should not place the creditors in a worse position than in the case of the debtor's insolvent liquidation. The court considers the plan submitted by the debtor at a court hearing and has limited grounds to refuse the proposed plan (Article 5 of the Insolvency Law).

**In-court rehabilitation procedure**

Yes, this is a fully court-supervised procedure. To commence the procedure, an application for initiation of insolvency proceedings is filed before the court, which decides on the acceptance or refusal of the application. A preparatory meeting of the court and a preliminary hearing also take place. The court oversees the procedure and generally approves all the main creditor decisions regarding the conduct of the proceedings, including their commencement and termination, the appointment of the insolvency practitioner (known as the rehabilitation manager), the validity of the claims, etc. A rehabilitation plan is prepared by the insolvency practitioner and it is pre-approved by the creditors. The court checks whether creditors have complied with the requirements for approval of the plan, and then decides whether to accept or reject the creditors' request for approval of the plan, taking into account the prospects of restoring the debtor's solvency (Articles 34, 35, 39, 47 and 52 of the Insolvency Law). The court will approve the in-court rehabilitation plan provided that creditors which voted against it receive not less than what they would have received in an insolvent liquidation (Article 52(7)).

## Are there any hybrid reorganisation procedures?

Yes, the pre-insolvency rehabilitation procedure is a hybrid reorganisation procedure. The debtor has the right to initiate the procedure despite the fact that no insolvency proceedings have been opened. The debtor prepares a rehabilitation plan, which is submitted to the court no later than five days following voting by the creditors. It is a pre-packed procedure (Article 5 of the Insolvency Law).

## Does the debtor remain in possession of and continue carrying on its business operations?

**Financial restructuring framework**

Yes, the debtor remains fully in possession of its business.

**Pre-insolvency rehabilitation procedure**

Yes, the debtor remains in possession, but the court appoints an insolvency practitioner (also known as a rehabilitation manager) if the appointment of such practitioner and the scope of his powers are determined by the rehabilitation plan. The prospective insolvency practitioner is elected by the creditors present at the general meeting holding more than 50 per cent of the total claims included in the rehabilitation plan (Article 5 of the Insolvency Law).

**In-court rehabilitation procedure**

No, from adoption by the court of the ruling on the implementation of the rehabilitation plan, the management powers of the debtor or its governing bodies are transferred to the insolvency practitioner (also known as a rehabilitation manager) except for powers provided for by the rehabilitation plan (Article 50 of the Insolvency Law).

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

**Financial restructuring framework**

No, there is no need to appoint an insolvency practitioner.

**Pre-insolvency rehabilitation procedure**

Not necessarily. The debtor and the creditors may exercise discretion on whether to involve an insolvency practitioner. The court shall appoint an insolvency practitioner only if such appointment is expressly provided for in the rehabilitation plan. The powers of the insolvency practitioner arise out of and are limited by the terms of the rehabilitation plan (Article 5 of the Insolvency Law).

**In-court rehabilitation procedure**

Yes, an insolvency practitioner (also known as a rehabilitation manager) must always be appointed by the court during the in-court rehabilitation procedure (Article 50 of the Insolvency Law).

In the decision to accept initiation of insolvency proceedings, the court proposes to three insolvency practitioners to apply for participation in the case. If an application for participation in the case has been received from only one insolvency practitioner, the commercial court shall appoint such person to be the rehabilitation manager. If an application for participation in the case has been received from two or three insolvency practitioners, the court appoints the person who was the first determined by automated selection to be the rehabilitation manager (Article 28)[4].

## Is there any applicable stay or moratorium?

**Financial restructuring procedure**

Yes, a moratorium is automatically imposed from commencement of the procedure to protect the debtor's assets against enforcement actions taken by involved creditors and by actions of the debtor's related parties. The moratorium also extends to non-involved creditors and prohibits them from enforcing against the debtor's unencumbered fixed assets. The moratorium is effective until the conclusion of the financial restructuring procedure, subject to a maximum period of 90 days. This term may be extended for not more than 90 calendar days with the consent of the involved creditors, provided these do not include any related parties of the debtor. The overall period of moratorium may not exceed 180 days (Articles 21 and 23 of the Financial Restructuring Law).

If a decision is made to terminate the moratorium, the debtor and one or more involved creditors may enter into a standstill agreement in writing and file a copy of this with the Secretariat. The standstill agreement shall contain the following essential terms: the date and conditions of entry into force of the standstill agreement; the date and terms of termination of the standstill agreement; and the terms and scope of the forbearance by involved creditors that sign the standstill agreement (Article 22).

**Pre-insolvency rehabilitation procedure**

Yes, the decision of the court on acceptance of the request for consideration of the rehabilitation plan must indicate the time and place of the court hearing and the imposition of a moratorium on the satisfaction of the creditors' claims included in the rehabilitation plan (Articles 5 and 6 of the Insolvency Law). While the moratorium is in effect, creditors are prohibited from collecting their claims on the basis of enforcement and other documents containing property claims, including enforcement of security by judicial or extrajudicial procedure. An exception exists for cases where enforcement proceedings have reached the stage of distributing monetary amounts collected from the debtor (including proceeds from the sale of the debtor's property), or publication of information on any sale/auction, as well as cases of execution of decisions in non-property disputes.

The moratorium is automatically lifted with the court's decision on either acceptance or dismissal of the request for approval of the rehabilitation plan. If the court fails to consider the request for approval of the rehabilitation plan within 60 days, the moratorium will be automatically lifted for secured creditors. The commercial court may limit the moratorium in exceptional cases, if such a moratorium may result in the loss of collateral of a secured creditor (Article 5 of the Insolvency Law).

**In-court rehabilitation procedure**

Yes, once the court puts the debtor into the asset management phase of the main insolvency proceedings, it introduces a moratorium on the satisfaction of creditors' claims. The moratorium is effective throughout all stages of the insolvency proceedings. As a result of moratorium, all creditors, including secured creditors, are prohibited from taking any enforcement actions against the debtor and the debtor may not discharge any individual claims of the creditors, except as set forth in the plan. Enforcement proceedings which have reached the stage of distribution of sums of money collected from the debtor (including those received from the sale of property of the debtor) are excluded from the moratorium. With respect to secured creditors, the moratorium ceases automatically 170 calendar days after commencement of the asset management phase of main insolvency proceedings, if the court has not recognised the debtor as insolvent (bankrupt) or has not issued a decision to commence the in-court rehabilitation procedure (Article 41 of the Insolvency Law).

[4] Subject to implementation of the Unified Court Information – Telecommunication System.

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

No, there are no provisions in any of the procedures protecting essential contracts and preventing termination of contracts by third parties on the grounds of the debtor commencing a reorganisation procedure. These measures are generally missing from the Insolvency Law.

However, Article 41 of the Insolvency Law provides that a moratorium on the satisfaction of the creditors' claims shall not apply to claims of post-insolvency creditors whose claims arose after the opening of insolvency proceedings. Post-insolvency creditors may include creditors which continue to provide essential services to the debtor.

## Is new financing protected by law?

**Financial restructuring framework**

No, as this is not an insolvency procedure. However, the financial restructuring law permits a debtor to obtain interim financing to continue operating its business before the approval of the financial restructuring plan, subject to the approval of the involved creditors (Article 13 of the Financial Restructuring Law).

**Pre-insolvency rehabilitation procedure**

No, there are no express provisions protecting new financing. However, new financing can be treated as having super-priority but this status will need to be agreed among creditors in the pre-insolvency rehabilitation plan.

**In-court rehabilitation procedure**

No, there is no express priority for any new financing. Creditors may, however, agree in the rehabilitation plan that their claims rank shall below any new financing (Article 51(5) of the Insolvency Law).

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

**Financial restructuring framework**

The Financial Restructuring Law permits the debtor to separate involved creditors into classes of creditors for repayment and voting purposes. Classes should contain creditors holding the same types of claims (e.g., unsecured trade claims or secured mortgage claims) and the proposed treatment for repayment of the claims should be class-specific.

**Pre-insolvency rehabilitation procedure**

Creditors in a pre-insolvency rehabilitation plan are divided into two classes: unsecured creditors and secured creditors, for the purpose of voting on the plan. For pre-insolvency rehabilitation only, the debtor has the flexibility to propose and develop a plan with certain creditors while leaving other creditors of the same class unaffected and also to create further subclasses of creditors depending on the type of claim, the type of security, etc. (Article 5(2) of the Insolvency Law).

**In-court rehabilitation procedure**

All creditors are generally divided into unsecured creditors and secured creditors. Preferred creditors may form a separate class or a sub-class of unsecured creditors. Secured creditors form one class and are not divided into sub-classes. A decision to approve or reject the rehabilitation plan must be adopted by voting separately in each class (Article 52(1) of the Insolvency Law).

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

**Financial restructuring framework**

The financial restructuring plan is deemed to be approved and binding on the debtor, related parties, sureties, and all involved creditors, if all involved creditors voted for it. If the restructuring plan has been approved by a vote of involved creditors holding more than two-thirds of claims of involved creditors then, in order to take a final decision on approval of the restructuring plan, the dispute is forwarded by any of the involved creditors to the Arbitration Committee in the order stipulated by Article 16 of the Financial Restructuring Law. In such a case, the restructuring plan is deemed to have been approved by all involved creditors from the moment of rendering by a sole arbitrator of an arbitral award on approval of the financial restructuring plan (Article 25). However, the financial restructuring plan may not provide for an obligation of dissenting creditors to extend new financing, write-off any part of debt which is fully secured by pledge/mortgage, or give up their collateral (Article 25(4)).

**Pre-insolvency rehabilitation procedure**

All creditors may take part in the meeting of creditors, even if their claims were not included in the rehabilitation plan. The required majority for a pre-insolvency rehabilitation plan is creditors of every category representing two-thirds of the total secured claims in value, and unsecured creditors of every category representing more than 50 per cent of the total unsecured claims included in the rehabilitation plan. Each class of unsecured and secured creditors must approve the pre-trial rehabilitation plan. Secured creditors which are parties related to the debtor are not allowed to vote on approval of the rehabilitation plan. If the rehabilitation plan provides for changing the priority of secured creditors' claims, the rehabilitation plan must be approved by every secured creditor which is affected. If the rehabilitation plan provides for satisfaction of individual creditors immediately after the approval of the rehabilitation plan, such claims shall not be included in any voting threshold for the purpose of approving the rehabilitation plan (Article 5.4 of the Insolvency Law).

**In-court rehabilitation procedure**

In-court rehabilitation plan needs to be approved by at least a 50 per cent majority for unsecured creditors in each class (provided that at least 50 per cent of unsecured creditors voted in each class) and a two-thirds majority for secured creditors in each class (provided that at least 50 per cent of secured creditors voted in each class). Each class of unsecured and secured creditors must approve the pre-trial rehabilitation plan (Article 52 of the Insolvency Law).

Claims of creditors which are related parties to the debtor are disregarded for the purpose of voting.

## Who does the reorganisation plan bind?

**Financial restructuring framework**

The financial restructuring plan will be deemed approved and binding on the debtor, related parties, sureties, and all involved creditors, if all involved creditors voted for it. If the restructuring plan has been approved by a vote of involved creditors holding more than two-thirds of claims of involved creditors and not by all involved creditors, it may nevertheless be binding on all involved creditors i.e. by cram down of the minority of creditors representing one-third by value of involved creditors' claims. The details of the 'dispute' are forwarded by any of the involved creditors to the Arbitration Committee as specified by Article 16 of the Financial Restructuring Law. A sole arbitrator may issue an arbitral award on approval of the financial restructuring plan. On the basis of such award, a restructuring plan will be deemed to be approved by all involved creditors (Article 25). However, dissenting creditors cannot be forced to provide new financing, write off or set off any debts, suspend interest or agree to a debt-to-equity conversion (Article 25 (4)).

The restructuring plan shall take effect as of the day of its signing by the debtor and the involved creditors that voted in favour (Article 25).

**Pre-insolvency rehabilitation procedure**

The pre-insolvency rehabilitation plan approved by the commercial court is binding on all creditors whose claims are included in the pre-insolvency rehabilitation plan (Article 5 of the Insolvency Law).

**Rehabilitation procedure**

The rehabilitation plan approved by the court is binding on all creditors whose claims are included in the plan, including creditors which did not participate in voting or which voted against the plan (Articles 52(4) and 50 of the Insolvency Law).

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

**Financial restructuring framework**

The Secretariat registers any application for restructuring received from the debtor and verifies that the application includes all the necessary information and relevant documents as listed in Article 18 of the Financial Restructuring Law. It takes a decision on the commencement of a financial restructuring procedure not later than on the next business day after the registration of the application (Article 19 of the Financial Restructuring Law).

An initial meeting of involved creditors should be held within 10 days of the commencement of a financial restructuring case by the Secretariat. The approval of the financial restructuring plan should occur 90 days following the commencement date. However, the deadline for approval of the plan which can be extended for up to an additional 90 days by agreement of financial institutions (excluding related parties) holding two-thirds by value of claims. The entire process may not exceed 180 days (Article 23). The Secretariat has created a **form to establish a process schedule for key deadlines** during the financial restructuring procedure.

The moratorium arises automatically from commencement of the procedure and remains in place until the conclusion of the financial restructuring proceedings but not longer than for a period of 90 days, which may be extended for not more than 90 calendar days, i.e. the moratorium is available for a maximum of 180 days.

**Pre-insolvency rehabilitation procedure**

There is no overall timeframe but there are specific timeframes for actions within the procedure. The debtor shall convene a meeting of creditors to approve the rehabilitation plan through written notification to all participating creditors. At the same time, the debtor provides a copy of the rehabilitation plan to participating creditors, and posts a public notice of the meeting of creditors on the website of the High Commercial Court of Ukraine. The meeting of creditors shall be convened no earlier than 10 days after placement of the notice. The debtor shall, within five days from the date on which the rehabilitation plan is agreed by creditors, submit a request for its approval to the relevant commercial court. The commercial court shall decide whether to accept or reject the request for approval of the rehabilitation plan within five days of receipt of the request (Article 5 of the Insolvency Law).

There are no statutory limits on the timeframe for implementation of the pre-insolvency rehabilitation and, therefore, the creditors have the discretion to define the timeframe in the rehabilitation plan.

There is no specific time limit on the moratorium, which begins when the court accepts the request for consideration of the rehabilitation plan and ends with the court's decision on either acceptance or dismissal of the request for approval of the rehabilitation plan.

**In-court rehabilitation procedure**

There is no overall timeframe but there are specific timeframes for actions within the procedure. The court has five days upon receipt to approve, refuse or return the application for the initiation of insolvency proceedings filed by the debtor or by a creditor (Article 34 of the Insolvency Law). The preparatory meeting of the court, to check the validity of the claims and the grounds for commencement of insolvency proceedings, shall be held not later than 14 days from the date of the decision on acceptance of the application for initiation of the proceedings. If there are valid reasons (payment of monetary obligations to creditors, etc.), the meeting may be held not later than 20 days from the date of such decision.

The court decision to initiate insolvency proceedings must be sent to the debtor, the creditors, and other persons who shall take part in the case not later than three days from the date of the court's decision. The preliminary court sitting shall be held not later than 70 calendar days, and in the case of a large number of creditors, not later than three months from the date of the court's preparatory meeting. Within 10 days from adoption of the ruling on the results of the court's preliminary sitting, the insolvency practitioner must notify in writing creditors in accordance with the register of creditors' claims, the authorised person of the debtor's employees and the authorised person of the debtor's founders (members, shareholders) about the time and place of the meeting of creditors (Articles 35, 37, 38, 39, 47 and 48).

The meeting of creditors can decide to extend the timeframe for the in-court rehabilitation procedure. If, within 15 days from the date indicated in the in-court rehabilitation plan, the meeting of creditors fails to decide on either extension of the in-court rehabilitation procedure or commencement of insolvent liquidation proceedings, the court may decide to proceed with the liquidation of the debtor at its own discretion (Article 57).

There are no statutory limits on the timeframe for implementation of the plan and, therefore, the creditors have the discretion to define the timeframe in the rehabilitation plan.

There is no specific time limit on the moratorium for unsecured claims, which begins once the court puts the debtor into the asset management phase of the main insolvency proceedings and ends once proceedings are closed (either after repayment of all debts at the end of the asset management stage, or as the result of in-court rehabilitation or liquidation). However, the moratorium ceases automatically with respect to secured claims 170 calendar days after commencement of the asset management phase, if the court has not issued a resolution recognising the debtor as insolvent (bankrupt) or a decision to commence the in-court rehabilitation procedure (Article 41 of the Insolvency Law). The court may also lift the moratorium over secured assets after the beginning of the in-court rehabilitation procedure if such assets are not being used under a rehabilitation plan or are perishable.

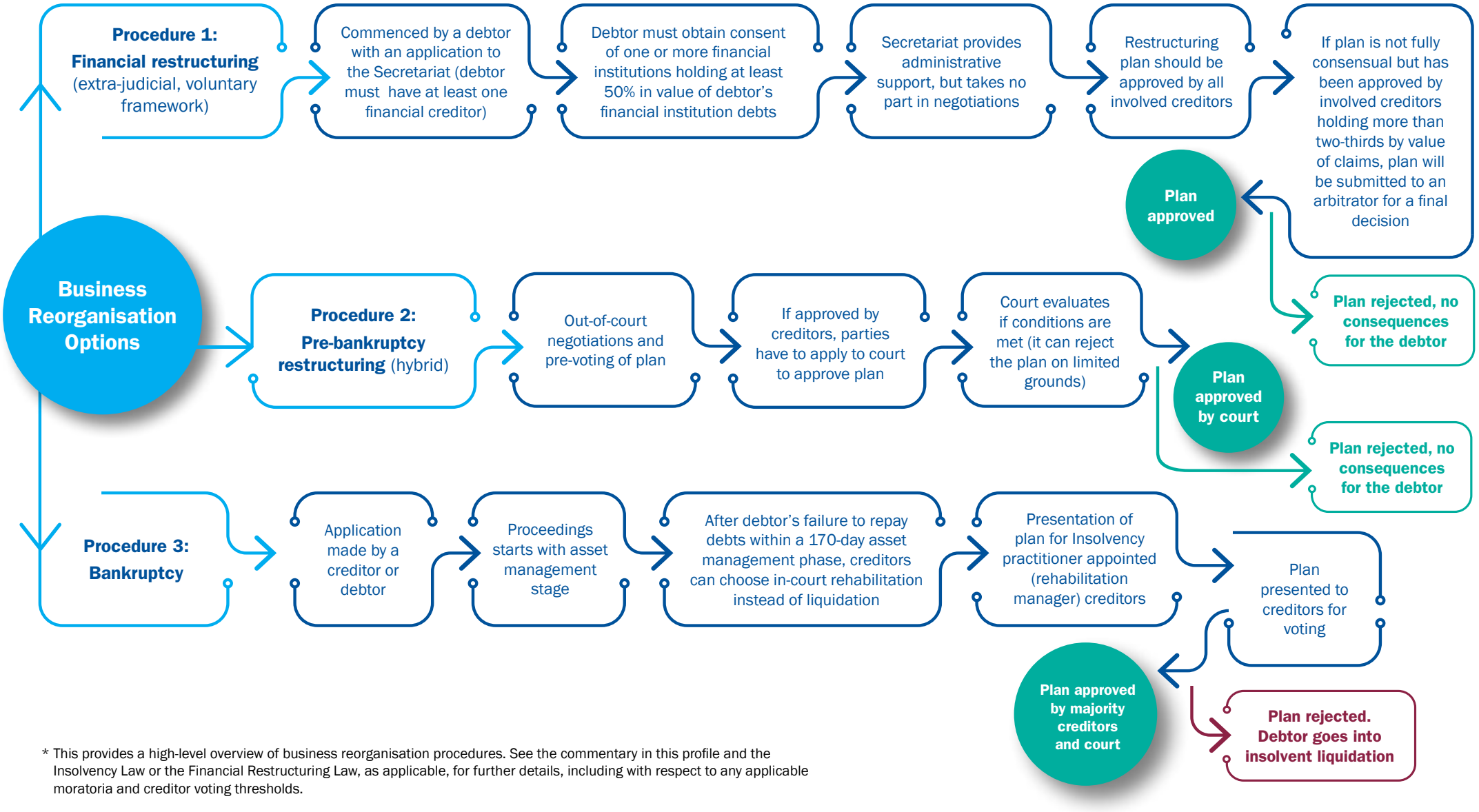
## Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No. However, Chapter VIII of the Insolvency Law contains detailed provisions regarding recognition of foreign insolvency proceedings and insolvency practitioners and judicial assistance and cooperation, among other matters.

## Special features/observations:

- Ukraine has a framework for voluntary financial restructuring, which is available on a temporary basis and which provides numerous incentives for workouts.
- Ukraine is among a minority of EBRD economies of operations with a hybrid ‘pre-packaged’ reorganisation procedure known as the ‘pre-insolvency rehabilitation’ procedure.

# Overview of Ukrainian Business Reorganisation Procedures*




* This provides a high-level overview of business reorganisation procedures. See the commentary in this profile and the Insolvency Law or the Financial Restructuring Law, as applicable, for further details, including with respect to any applicable moratoria and creditor voting thresholds.

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