Business Reorganisation Assessment

Romania

European Bank
for Reconstruction and Development

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Part A

General Information

Macro Data

19.030	2.2%	US$ 18,410	lei Romanian leu – RON	16%	10.7%	5.6%
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 act governing insolvency and restructuring of companies and entrepreneurs (excluding persons practising 'liberal professions' on the basis of relevant professional qualifications) in Romania is the **Law on Insolvency Prevention and Insolvency Proceedings** (the Insolvency Law) (Official Bulletin No. 466) adopted on 25 June 2014 (as amended). **Ordinance 06/2019** (Official Gazette 648/2019) on Establishment of Fiscal Facilities (the Ordinance), applicable to natural persons, legal entities and entrepreneurs, introduces an out-of-court restructuring procedure available only for budgetary claims[3] outstanding on 31 December 2021.

[1] **IMF – Source as of August 2023:** www.imf.org/en/Countries/ROU

[2] **PWC – Source as of August 2023:** taxsummaries.pwc.com/romania/corporate/taxes-on-corporate-income

[3] A budgetary claim, under Romanian law, is the obligation to pay any amount due to the general consolidated budget identified in enforceable titles issued in accordance with the law and held in the records of the central tax authority. Civil and commercial claims of the state are not eligible for this procedure.

The Code of Civil Procedure contains certain provisions with respect to procedural issues relevant for insolvency proceedings. In addition, some provisions relating to insolvency practitioners are found in the **Emergency Governmental Ordinance 86/2006 on the Organisation of Activity of Insolvency Practitioners** effective 22 November 2006 (as amended and approved by law), and also in the **Statute on the Organisation and Exercise of the Insolvency Practitioner Profession** (of 29 September 2007).

Directive (EU) 2019/1023 (the Restructuring Directive) on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt was transposed into national legislation with Law No. 216/2022 which amended the Insolvency Law.

Insolvency Data

Information regarding the registration and identification of natural persons and legal entities that filed for insolvency is maintained by the **Official National Trade Register Office** (Oficiul National al Registrului Comertului) under the Ministry of Justice. This register is connected to the Bulletin of Insolvency Proceedings (Buletinul Procedurilor de Insolventa) and is available online **here**. The Bulletin of Insolvency Proceedings publishes court summonses, notices and communications of procedural documents by the courts and court-appointed insolvency practitioners after the opening of insolvency proceedings, as well as notifications of other acts which must be published according to the Insolvency Law.

Annual submissions and proceedings related to the Insolvency Law may be accessed online on the website of the **Official National Trade Register Office** (Oficiul National al Registrului Comertului), which publishes the number of applications for opening insolvency proceedings on a monthly basis. However, data is not available on the outcome of the application for insolvency and whether this will result in either the judicial reorganisation or liquidation of the business.

Type of procedures	2020	2021	2022	2023[4]
Court decisions opening insolvency proceedings	5,694	6,144	6,649	4,578

As of 1 April 2023, 21,418 companies were in some form of insolvency procedure. Of this number, 13,975 (65.2 per cent) of companies were in insolvent liquidation (bankruptcy). The rest of the companies, i.e. 7,443, were in the initial observation period following opening of insolvency proceedings or in a reorganisation procedure. This aggregated data is not publicly available and was obtained through an individual request to the Union of Practitioners, which keeps its own records using the data communicated by the **Official National Trade Register Office**. There is no publicly available breakdown of insolvency on state-owned enterprise insolvencies, as those are included in the data provided above.

There is no data available for the out-of-court restructuring procedure for budgetary claims. Also, there is no available data on the restructuring agreement and preventive composition procedures, since they were introduced in 2022.

Company Information

The Romanian law framework for companies (other than banks) is governed by the **Companies Law No. 31/1990**, the **Law No. 26/1990 on the Trade Registry**, the **Emergency Ordinance No. 44/2008** and the **Civil Code**. Information about companies is contained in the Companies Register maintained by the official **National Trade Register Office**, under the Ministry of Justice. The register is available online, updated in real-time, and can be accessed by any interested person **here**. Limited information including whether the company is in insolvency proceedings is available free of charge. Other information, for example regarding the identity of the company's shareholders or directors, is available subject to payment of a fee.

The record of a company will include a reference to such company having entered into insolvency proceedings where applicable. Information regarding whether a company is in insolvency proceedings is also available in the Bulletin of Insolvency Proceedings.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency proceedings fall within the competence and exclusive jurisdiction of commercial district courts (the Tribunal). These are specialised courts or special sections of the courts that deal mainly with insolvency cases. As a general rule, the jurisdiction of the court is determined on the basis of the debtor's registered office (or professional establishment in the case of entrepreneurs), as at the date of submission of the petition for commencement of insolvency proceedings. If the debtor's registered office changed fewer than six months before the application for the opening of insolvency proceedings was lodged, the debtor's registered office or business address is deemed to be the address where the debtor was registered previously.

Authorities involved in insolvency proceedings are the Ministry of Justice (through the insolvency courts) and relevant tax authorities (when tax claims are registered in the creditors' table). The Official National Trade Register Office under the Ministry of Justice is the competent authority for issuing internal regulations that refer to insolvency (subsequently approved by Ministerial Order or by Government Decision or included in amendments of the law), that manages the company register and the insolvency register. It is responsible for insolvency regulations, which are subsequently approved by Ministerial Order or by Government Decision or included in amendments to the law.

With respect to the out-of-court restructuring procedure for budgetary claims, the relevant fiscal authority with claims against the debtor is involved (Article 3 of the Ordinance). Any plans are agreed and monitored by the competent authority according to the size of the debtor and its permanent address.

Insolvency practitioners (known as judicial administrators and judicial liquidators) must be enrolled in a register administered by the **National Union of Insolvency Practitioners**. To be listed in the register, certain requirements, such as an entry examination and practical experience (a minimum of three years), along with a degree in law or economics must be met. The purpose of the registration process is to guarantee high professional standards. The register of insolvency practitioners is available on the website of UNPIR, the self-governing association of insolvency practitioners: **www.unpir.ro/tablou**.

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[4] Until 30 September 2023.

Part B

Business Reorganisation

Are there any incentives to conduct a reorganisation?

There are no incentives or special treatments for companies in insolvency proceedings. A company in insolvency proceedings benefits from the same treatment as a normal company, with no tax exemptions or additional taxes. The same rule applies to the debtor's creditors. However, a creditor's tax base can be reduced where the claim of such creditor is reduced either pursuant to a reorganisation plan by the debtor or following a final payment to such creditor as part of an insolvent liquidation of the debtor where creditors receive less than the value of their outstanding claims The debtor cannot request the conversion of an insolvent liquidation procedure into a reorganisation procedure.

What is the nature and purpose of the reorganisation procedure(s) for businesses?

The purpose of pre-insolvency and insolvency proceedings is to ensure that creditors' claims are recovered to the greatest extent possible, while also giving debtors an opportunity for efficient business recovery, to maintain economic activity and protect jobs. Article 4 sets out certain key principles that govern the procedures including: effective and efficient recovery of the business, either through the debtor's effective access to early warning mechanisms, insolvency prevention procedures or court-supervised administration; ensuring access to sources of financing in insolvency prevention procedures during the observation and reorganisation periods, with the granting of adequate treatment and priority for payment for the protection of such claims, and promoting the negotiation and settlement of claims and the conclusion of a restructuring agreement or a preventive arrangement with creditors.

Currently, there are two pre-insolvency reorganisation procedures under the Insolvency Law; the restructuring agreement (procedura acordului de restructurare) and the preventive composition (concordat preventiv), which are both of a preventive nature.[5] There is a further judicial reorganisation procedure within the general insolvency procedure and an out-of-court restructuring procedure for budgetary claims outstanding on 31 December 2021.[6] **Click here** for an overview of these procedures. Additionally, there is an out-of-court restructuring procedure for budgetary claims owed to fiscal authorities (Article 1 of the Ordinance).

There are no special reorganisation procedures for strategically important businesses.

Certain debtors are not eligible for insolvency proceedings and need to enter a simplified liquidation procedure. These include debtors which: i) do not own any assets; and/or ii) have lost their accounting documents; and/or iii) no longer have administrative bodies or can no longer function; and/or iv) no longer meet conditions regarding the registered or professional headquarters; and/or v) have declared their intention to enter insolvent liquidation proceedings through the preliminary application; and/or vi) have not obtained the authorisation required by the law to exercise specific professions. The debtor needs to satisfy only one of the above conditions to qualify for a simplified liquidation procedure.

References to Articles in this part 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**

[5] Law No. 216/2022 replaced the mandate ad hoc (ad hoc mandat) procedure with a restructuring agreement procedure (procedura acordului de restructurare) and streamlined the preventive composition (concordat preventiv) procedure. The mandate ad hoc and retired preventive composition procedures still apply for proceedings initiated before transposing the EU Restructuring Directive on 17 July 2022.

[6] There are no special reorganisation procedures for strategically important businesses.

Restructuring agreement procedure

The restructuring agreement procedure is a light-touch preventive insolvency procedure. It is triggered at the request of the debtor and involves the preparation of a restructuring agreement by a restructuring manager, with or without the help of the debtor. The agreement is the basis of the negotiation of an arrangement with the debtor and one or more creditors with a view to overcoming the debtor's financial or other difficulties (Article 5). Subsequent confirmation of the restructuring agreement by a syndic judge (as appointed by the court to oversee the insolvency proceedings, also known as insolvency judge) may or may not be required depending on the debtor's income and the vote of creditors. A confirmed restructuring agreement does not suspend enforcement proceedings against the debtor.

This procedure may only be commenced by a debtor in difficulties[7], whether a company or entrepreneur (professional), which is not yet insolvent. The procedure is not available to debtors which in the 12 months prior to the application for the restructuring agreement procedure had an arrangement with creditors which failed, and where the debtor in the previous three years prior to the submission of the application for confirmation of the restructuring agreement had been convicted of certain types of crimes (Articles 6-1 and 6-2).

The debtor must contract a restructuring manager from the list of active licensed insolvency practitioners to draft and negotiate a restructuring agreement (Article 15 (1)).

Preventive composition procedure

The preventive composition procedure is a pre-insolvency preventive procedure that aims to the conclusion of a restructuring plan between a debtor in financial difficulties which is not yet insolvent, and its creditors. Confirmation of the restructuring plan by a syndic judge is required in all cases. The preventive composition procedure, under certain circumstances, suspends enforcement proceedings against the debtor until the plan has expired or failed. Such suspension can be requested as soon as a restructuring plan is proposed, if it is established that the continuation of enforcement action would create irreparable harm to the debtor. Suspension of all enforcement actions is automatic when a restructuring plan is confirmed by the judge.

This procedure is available for any debtor in difficulties (as defined above), whether such debtor is a company or entrepreneur, subject to certain exclusions. It can be initiated by the debtor, or at the request of one or more creditors, provided that the written consent of the debtor in difficulties is obtained (Article 23). Exclusions include where in the three years prior to the application for preventive composition, the debtor had an arrangement with creditors which failed, where the debtor is in the state of insolvency, and where the debtor has been convicted of certain types of crimes (Article 16).

The debtor must contract a composition administrator from the list of active licensed insolvency practitioners, who then has to be vetted by a syndic judge (Article 17).

In both the preventive composition procedure and the restructuring agreement procedure, special provisions relating to the plan are applicable for smaller companies with either a net turnover or a gross income of €500,000 or less.

Judicial reorganisation procedure

This is a court-supervised procedure which applies only to insolvent debtors that are legal entities or entrepreneurs. The procedure involves drafting, confirming and implementing a plan, known as the reorganisation plan. This may include: operational and/or financial restructuring of the debtor; corporate restructuring by modification of the registered capital structure; and restriction of business activity through partial or full liquidation of the debtor's assets (Article 5).

To initiate this procedure, the debtor or any interested creditor must petition for the opening of general insolvency proceedings. A petition for insolvency may be submitted by the debtor through its representative bodies or by any interested creditor. The debtor must be insolvent, i.e. have insufficient available cash for the payment of certain (fixed amount), liquid and payable debts. Insolvency is presumed where the debtor has not paid its debts to its creditor(s) after 60 days from the due date of such debts. A creditor is entitled to apply for insolvency proceedings where its claim on the debtor's assets is certain and due for more than 60 days. Both the debtor and the creditor must satisfy the minimum threshold amount of RON 50,000 (approx. €10,000) to apply to open general insolvency proceedings (Article 5). Further procedural requirements are set out in Articles 67 and 68 for the debtor and in Article 70 for creditors.

In certain cases, the court may oblige the petitioning creditor to pay a deposit security of up to 10 per cent of the value of the debt, but not exceeding RON 40,000 (approx. €8,000), to cover any damages incurred by the debtor, in case of an urgent petition by a creditor requesting interim measures. This covers the risk of an injunction against the debtor being without merit. The debtor can challenge the insolvency petition filed by the creditor and prove that it has enough liquidity to meet its payment obligations (Article 72).

The reorganisation plan can be proposed within the insolvency proceedings by the debtor following the approval of its shareholders or associates' general meeting, the insolvency practitioner, or creditors representing at least 20 per cent of the total registered claims (Article 132). The reorganisation plan should provide some minimum mandatory information regarding how the debtor will restructure its activities and how it will pay the debts (Article 133).

[7] The definition of difficulties is not limited to financial difficulties but encompasses any circumstances that cause a temporary impairment of the debtor's activities that give rise to a real and serious threat to the fulfilment of its contractual obligations, unless appropriate measures are taken (Article 5).

Out-of-court restructuring procedure

In order to avoid insolvent liquidation proceedings, the debtor (legal entities and entrepreneurs) in financial difficulties, facing a risk of insolvency, can restructure its budgetary obligations. These include any obligation to pay money to the general consolidated budget or the budgets of central and local public authorities (Article 1 of the Ordinance).

To benefit from the out-of-court restructuring procedure for budgetary obligations recorded by the central fiscal body (ANAF), the debtor must meet all of the following conditions: i) the debtor must not be eligible to benefit from the rescheduling of budgetary claims[8] regulated by the **Fiscal Procedure Code**; ii) the debtor must present a restructuring plan and a prudent private creditor test, drafted by an independent expert; iii) the debtor may not be subject to an insolvency procedure; iv) the debtor may not to have been liquidated; v) the debtor must have submitted all fiscal declarations; and vi) the prudent private creditor test must be fulfilled (an independent analysis carried out on the basis of the debtor's restructuring plan) to demonstrate that the state would obtain a higher degree of debt recovery in the restructuring option compared to both the enforcement option and the insolvent liquidation procedure (Article 2 of the Ordinance).

The debtor must submit to the competent fiscal authority its request for the restructuring of the budgetary obligations, together with the restructuring plan and the prudent private creditor test (Article 5 of the Ordinance).

To what extent the court is involved?

Restructuring agreement procedure, preventive composition procedure and judicial reorganisation procedure

Both the restructuring agreement procedure and the preventive composition procedure are hybrid in nature: the court intervenes to accept the petition for commencement and to approve the plan. After the approval of the plan, the administrator monitors the implementation of the plan, informing the creditor on any progress each quarter.

The court is not involved in the restructuring agreement procedure where the debtor had a net turnover or a gross income of €500,000 or less in the previous year and the restructuring agreement was approved by affected creditors unanimously.

In all proceedings, the insolvency judge is obliged to check that the plan is viable and that the creditors are treated fairly. The plan must give creditors the best possible treatment, with the analysis being carried out in comparison with existing legal alternatives (bankruptcy). The creditors have the right to request in court the termination of the agreement due to non-fulfilment of the plan.

The Insolvency Law does not provide for the participation of any other authorities than the court in the procedures or for the use of alternative dispute resolution methods.

Out-of-court restructuring procedure

There is no court involvement in the out-of-court restructuring procedure for budgetary claims. The fiscal authority in its capacity as creditor of the debtor receives the request to restructure the budgetary obligations (Article 5 of the Ordinance). If the fiscal authority confirms that all the conditions are met, it issues a decision approving the restructuring (Article 6 of the Ordinance).

[8] Deferment of budgetary obligations for five years, regulated by the Tax Procedure Code (arts. 186 - 209) through the conclusion of an agreement between the debtor and the tax authority. The debtor must possess assets (free of any lien) that are at least 120 per cent of the value of the claims for which the debtor is asking this payment rescheduling. The assets will be used to secure the budgetary claim.

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

In all proceedings, the debtor has the right to propose the appointment of a specific insolvency practitioner (Article 15 for the restructuring agreement procedure and Article 17 for the preventive composition procedure). The debtor's activity is only supervised by an insolvency practitioner in judicial reorganisation proceedings. In judicial reorganisation proceedings, a creditors' proposal on the choice of insolvency practitioner will take precedence over the debtor's application (Article 45).

Insolvency practitioners are private professionals registered in the **public register** of the Union of Insolvency Practitioners. There are no State insolvency practitioners.

The insolvency practitioner has to approve the legality of all acts carried out by the debtor after the opening of insolvency proceedings. If the debtor proposes to carry out extraordinary operations (other than those required in the ordinary course of business), the approval of the creditors' committee is mandatory. Creditors request the replacement of the insolvency practitioner only in judicial reorganisation proceedings and this must be on the grounds of so-called culpable acts (either negligent or fraudulent acts).

Restructuring agreement procedure

Yes, the debtor remains in possession. A restructuring manager is contracted by the debtor from the list of authorised insolvency practitioners to support the debtor in reaching an agreement with its creditors (Article 15-1). The restructuring manager does not supervise the debtor or assume any management powers with respect to the debtor's business.

Preventive composition procedure

Yes, the debtor stays in possession under the supervision of the insolvency practitioner (the composition administrator) appointed by the court and contracted by the debtor (Articles 17 and 33). The debtor can carry on the activities within the ordinary course of its business, subject to the oversight of the practitioner. The composition administrator's tasks include preparing the list of claims and establishing classes of creditors, drafting a restructuring plan jointly with the debtor, and resolving amicably any dispute between the debtor and creditors or between creditors (Article 19).

Judicial reorganisation procedure

The court appoints on its own initiative or at the debtor's or creditors' proposal an insolvency practitioner (judicial administrator) to oversee the insolvency procedure. The judicial administrator's tasks include examining the economic situation of the debtor, preparing a detailed report on the causes and circumstances that led to the insolvency including whether there is a real possibility of achieving a reorganisation, and (where applicable) preparing a reorganisation plan for the debtor (Article 58).

In addition, a special administrator (either a natural or legal person, i.e. not necessarily an insolvency practitioner) may be appointed by the general meeting of the shareholders, associates and members of the debtor, to represent their interests in the proceedings and, when the debtor is allowed to manage its affairs, to carry out, on its behalf, the necessary acts of administration. During the procedure the special administrator will manage the operations of the debtor, under the supervision of the judicial administrator (Article 141). Creditors have the possibility to propose a reorganisation plan and, through the plan, to name executive directors.

The debtor is supervised by an insolvency practitioner in accordance with the confirmed plan, until the judge closes the procedure or terminates it and orders the opening of insolvent liquidation (bankruptcy) proceedings. During the procedure, the debtor is managed by a special administrator, under the supervision of the insolvency practitioner (Article 141 (1)). Shareholders do not have the right to intervene in the conduct of the business or management of the debtor, with the exception of specific and exhaustive cases laid down by law and the reorganisation plan.

Out-of-court restructuring procedure

The debtor remains in possession with supervision by the fiscal authority. An independent expert, chosen by the debtor and who is not required to be an insolvency practitioner, carries out a continuous monitoring of the debtor, periodically drawing up a report on the implementation stage, which the expert transmits to the debtor and the fiscal body. During the entire period of implementation of the measures included in the restructuring plan, the central fiscal body establishes a supervision regime to ensure the debtor's compliance with the terms of the restructuring plan, as well as with the measures for restructuring budgetary obligations. In this case, the head of the competent fiscal body designates one or more persons to carry out the supervision. The supervision includes, among other things: participation in the meetings of the general assembly of shareholders, associates, the board of directors and other such meetings regarding the management of the debtor, as an observer; access to all the locations where the debtor carries out his activity; access to all documents received by or emanating from the debtor; analysing and reporting the implementation progress; and consulting and advising the independent expert regarding the restructuring measures (Article 7 of the Ordinance).

Who are the parties and what is the content of the plan?

Restructuring agreement procedure, preventive composition procedure and judicial reorganisation procedure

A restructuring agreement procedure, a preventive composition agreement and a judicial reorganisation cover the following categories of claims, which all vote in separate groups: secured creditors; employees (with respect to salary claims); essential creditors which consist of suppliers which cannot be replaced under reasonable economic or financial conditions in relation to the continuation of the debtor's business (Articles 5 (23) and 138); creditors with public claims or state creditors which are mainly tax-related (preferential creditors); and unsecured creditors.

For the purposes of voting on the preventive composition agreement, one or more sub-categories of claims belonging to creditors with specific common interests may be set up within the same category of claims, the treatment of which may differ from one sub-category of claims to another (Article 27). In all three proceedings, there are no creditors legally exempt from participation, or veto rights that would allow a class of creditors to seek invalidation of the proposed plan. The conversion of claims into shares is a measure expressly provided for in all three procedures: the restructuring agreement procedure (Article 15 (2) (g)), the preventive composition (Article 24 (g)) and the judicial reorganisation procedure (Article 133 (5) (k)). This conversion requires all usual corporate approvals in case of preventive procedures, and in the case of the reorganisation procedure, if the plan is proposed by the debtor. If a plan containing the conversion of claims into shares is proposed by the creditors, approval is not needed.

In the case of the restructuring agreement procedure and the preventive composition procedure, the proposed restructuring measures can include i) the operational restructuring of the debtor's activities; ii) changing the composition, conditions or structure of the debtor's assets or liabilities; iii) the capitalisation of some assets of the debtor; iv) capitalising on the enterprise as an independent entity; v) the merger or division of the debtor, under the law; and vi) modification of the structure of the debtor's social capital either by increasing the social capital by co-opting new shareholders or associates or by converting receivables into shares, with the corresponding increase in the social capital.

In a judicial reorganisation procedure the plan should specify the appropriate measures for its implementation, such as: i) disposal of assets and repayment of creditors in preferential order; ii) obtention of new financing; iii) transfer of assets; iv) merger or division of the debtor; v) liquidation of all or some of the debtor's assets; vi) restructuring or write-off of secured claims by granting to the secured creditor an equivalent guarantee of protection; vii) extension or restructuring of interest; viii) change of the debtor's structure; ix) issuance of shares (ordinary and preferential); and x) issuance of securities by the debtor accompanied by the express consent, in writing, of the creditor who is to receive the issued securities, which is given before the creditors vote on the reorganisation plan.

The judicial reorganisation plan cannot provide for the conversion of budget claims (preferred claims) into bonds. With the consent of the budgetary creditor (preferred creditor) expressed by vote, the reorganisation plan can only provide for the conversion of the state's budgetary claims into shares, if the following conditions are cumulatively met: a) the content of the reorganisation plan, based on the economic-financial analysis, demonstrates that the proposed measures are viable for the debtor company and that the company can continue its activity; b) it follows from the content of the reorganisation plan that this way of extinguishing the budget debt leads to maximisation of the recovery of the state debt, compared to the situation of the debtor entering insolvent liquidation; and c) the conversion must be complete and carried out at the value of the state's budget debt (preferred claims): it cannot be cumulated with the measure of the reduction of the budget debt (preferred claims).

The maximum duration of the preventive composition agreement (Article 25) and the reorganisation plan (Article 139) is five years, calculated from the date of approval of the plan by the judge. The restructuring agreement does not have a maximum duration. However, the practitioner is obliged to monitor it for a maximum of three years.

Out-of-court restructuring procedure

The parties for an out-of-court restructuring procedure are the debtor and the fiscal authority holding the claims to be restructured.

The restructuring plan must include: a presentation of the causes and extent of the debtor's financial difficulties, as well as the measures taken by the debtor to overcome them; the business situation of the debtor; information regarding the reasons why the debtor cannot benefit from payment deferment according to the Fiscal Procedure Code; the measures for restructuring the debtor business; the ways in which the debtor intends to overcome the state of financial difficulty, with clear deadlines for implementation; the measures for restructuring the budget obligations; and presentation of the relevant economic and financial indicators that demonstrate the restoration of the debtor's viability. The restructuring plan must provide for the period necessary for the payment facilitation, which must not exceed seven years, as well as the amount and payment terms of the instalments established by a payment schedule along with the method of payment (Article 4 of the Ordinance).

The restructuring measures can include: the rescheduling of the main budgetary obligations, as well as the postponement of payment of the accessories i.e. (interest, penalty interest) and/or a share of the main budgetary obligations, conversion into shares of the main budgetary obligations, extinguishing the main budgetary obligations by giving in payment some immovable assets of the debtor, cancellation of some main budgetary obligations up to a maximum of 50 per cent of the total amount. The restructuring plan may provide for: a) operational and/or financial restructuring; b) corporate restructuring by changing the share capital structure; and c) restricting the activity through the partial capitalisation of assets from the debtor's estate (Article 4 of the Ordinance). The debtor may pay in advance, by notifying the fiscal authority, partially or fully, the amounts included in the payment schedule (Article 20 of the Ordinance).

Is there any applicable stay or moratorium?

Restructuring agreement procedure

No, since this is a voluntary procedure. However, by confirming the restructuring agreement, the creditors affected by its provisions are required to recover their claim in the way set forth in the agreement; they cannot request any forced execution against the debtor's assets.

Preventive composition procedure

Yes, from the date of the opening of the procedure, all proceedings (including those linked to secured and preferred claims) against the debtor are suspended for a maximum period of four months but until no later than the date of delivery of a decision approving the restructuring plan or closing the procedure. This is subject to the exception of salary claims, the suspension of which is not automatic. Under some circumstances, the syndic judge may extend or grant a new stay for a maximum of 12 months from the date of the opening of the preventive arrangement procedure, at the request of the debtor, creditor or composition administrator. During the stay, insolvency proceedings cannot be commenced against the debtor (Article 25).

Judicial reorganisation procedure

Yes, all in-court and out-of-court actions and any measures for the forced recovery of claims (including secured and preferred claims) against the debtor's assets are suspended from the opening of insolvency proceedings by the court (Article 75). There are, however, exemptions from the moratorium, including civil proceedings joined to criminal prosecutions against the debtor and judicial proceedings against any co-debtors and/or third-party guarantors, which may continue.

Out-of-court restructuring procedure

Enforcement and execution measures relating to the budgetary claims that are included in the restructuring plan cannot be initiated or are suspended from the date of submission of the notification by the debtor with the intention to restructure its budgetary obligations (Article 15 of the Ordinance).

Is business continuity protected?

Restructuring agreement procedure

There is no protection under this procedure for contracts that are essential for the continuation of the debtor's day-to-day operations and no overall ban on contractual termination clauses triggered by the debtor's entry into this procedure.

There are no provisions protecting new financing provided by a creditor during the restructuring agreement procedure. The restructuring manager ensures that new financing is justified by the implementation of the agreement and does not unfairly prejudice the interests of creditors (Article 15-7).

There are no special provisions regarding the execution of employment contracts. This means that they will continue to be executed as normal, in the absence of contrary provisions in the restructuring agreement. In the case of termination of these contracts, employees will benefit from the contractual or legal rights regulated by the **Labour Code**.

Preventive composition procedure

Pending the approval of the restructuring plan, creditors cannot refuse to perform essential ongoing contracts, or terminate, perform in advance or modify such contracts to the detriment of the debtor exclusively for non-payment of claims arising prior to the stay, provided that the debtor complies with its obligations under those contracts during the stay of enforcement (Article 25-2).

New financing is not expressly protected by the law. However, the restructuring plan may foresee the provision of new financing to allow the debtor to overcome a state of financial difficulty (Article 24). The composition administrator shall ensure that new financing is justified by the implementation of the restructuring plan and does not unfairly prejudice the interests of creditors (Article 28 (2)). Prior to the approval of the restructuring plan, the debtor may access interim financing, with the prior approval of the composition administrator (Article 25-2 (2)).

There are no special provisions regarding the execution of employment contracts. This means that they will continue to be executed as they were concluded, in the absence of contrary provisions in the content of the preventive agreement. In case of termination of these contracts, employees will benefit from the contractual or legal rights, regulated by the Labour Code.

Judicial reorganisation procedure

Essential contracts are protected and contractual termination clauses are prohibited. A supplier of essential services, such as electricity, gas, water, telephone or other similar services, cannot change, refuse or temporarily interrupt such services to the debtor during the initial observation period following the opening of insolvency proceedings or during the judicial reorganisation procedure (Article 77 (1)). Furthermore, any clause in a contract providing for termination of the contract on the grounds of the opening of insolvency proceedings is deemed invalid (Article 123).

Any funding granted to the debtor during the observation period for the purposes of maintaining current activities which has been approved by the meeting of creditors is explicitly given priority in repayment (Article 87 (4)). The reorganisation plan is also required to specify appropriate measures for its implementation, including obtaining financial resources and any financing to be given priority in a subsequent insolvent liquidation and winding up (Article 133 (5)).

There are no special provisions regarding the execution of employment contracts. This means that they will continue to be executed as normal, in the absence of contrary provisions in the reorganisation plan. In the case of termination of these contracts, the employees will benefit from the contractual or legal rights regulated by the Labour Code.

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

In all three procedures, there are no provisions that limit the rights of secured creditors. On the contrary, for the validation of the plans, in some situations, the positive vote of the guaranteed creditor is mandatory.

Restructuring agreement procedure, preventive composition procedure, judicial reorganisation procedure

Yes, there are five recognised mandatory classes of creditors which may vote on the restructuring agreement: secured creditors; employee salary claims; essential creditors which consist of suppliers which cannot be replaced under reasonable economic or financial conditions in relation to the continuation of the debtor's business (Articles 5 (23) and 138); creditors with public claims or state creditors which are mainly tax-related; and unsecured creditors. Assuming that the conditions are met, it is mandatory that creditors are grouped into these categories. The agreement will be voted on only by creditors whose claims are affected. The debtor can propose the formation of an additional group of essential creditors.

Debtors with a net turnover or gross income of €500,000 or less in the previous year are not required to set up classes.

With respect to the judicial reorganisation procedure (within main insolvency proceedings), secured creditors are usually satisfied in full unless the value of the receivables is not covered by the value of the secured assets, in which case each creditor will become an unsecured creditor for the remaining amount of its receivable. For the judicial reorganisation plan to be valid, it should identify the disadvantaged classes of creditors (creditors with modified claims) and the treatment of such classes (Article 133 (4)). The debtor may choose whose claims are affected or not, and their payment schedule. Creditors holding claims that will be paid in full within 30 days from the confirmation of the plan or in accordance with the credit or leasing contracts from which they arise, will be considered to have accepted the plan (Article 139).

What are the majorities required to approve a reorganisation plan?

There are certain limitations related to the exercise of voting, as follows:

Article 5-9 of Law 85/2014 defines control as the ability to determine or influence in a dominant way, directly or indirectly, the financial and operational policy of a company or decisions at the level of corporate management. A person has control when that person: a) directly or indirectly owns a qualified participation of at least 40 per cent of the voting rights of the respective company and no other associate or shareholder directly or indirectly owns a higher percentage of voting rights; b) directly or indirectly owns the majority of voting rights in the general meeting of the respective company; or c) as an associate or shareholder of the respective company, has the power to appoint or revoke the majority of the members of the administrative, management or supervisory bodies.

When voting on the restructuring plan (Article 27 para 10) as well as on the reorganisation plan (Article 138), creditors who, directly or indirectly, control, are controlled by or are under the joint control of the debtor may participate in the meeting. However such connected creditors may only vote on the restructuring plan if it allocates a lower return to such creditors than they would receive in the case of insolvent liquidation. There are no similar limitations on voting on the restructuring agreement.

In all procedures, the interested creditors can request the rejection of the plan on the grounds of illegality, on the date when the judge is called to confirm its legality.

Restructuring agreement procedure

A restructuring agreement is considered accepted by a class if it is accepted by an absolute majority of the value of the claims of such class. For debtors with a net turnover or gross income of €500,000 or less in the previous year that opt out of setting up classes, the agreement is accepted if it is voted by the absolute majority of the amount of the affected claims (Article 15-4 of the Insolvency Law). Once approved, the agreement has to be confirmed by the syndic judge, who may summon the debtor and/or restructuring manager if the judge considers that additional explanations are necessary before confirming it (Article 15-6 of the Insolvency Law).

Any dissenting classes of creditors may be subject to cross-class cram down (Article 15). If the restructuring agreement is not accepted by an absolute majority of the value of the claims of each class, the court can still approve the agreement, provided that: i) the agreement has been approved by a majority of the classes of claims, other than the class of unsecured creditors; or by at least one class of voting claims other than a class of claims that would not receive any payment in the event of insolvent liquidation; ii) the classes of claims which did not vote for the agreement are treated more favourably than any other class of lower-ranking claims, as a result of the hierarchy of classes of creditors; iii) the agreement was voted on by creditors representing at least 30 per cent of the total affected claims; iv) creditors in the same class of claims are treated equally and in proportion to their claim; v) the communication of the restructuring agreement to all affected parties was made in line with the Insolvency Law; vi) creditors who did not vote or did not participate in the vote for the restructuring agreement are treated fairly; vii) the new financing is justified by the implementation of the restructuring agreement and does not unfairly prejudice the interests of creditors; viii) the agreement has a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the company; ix) the voting conditions and classes of creditors have been observed; and x) the claims that do not form part of the restructuring

agreement are not directly affected by the measures it provides for and the grounds for their exclusion from the agreement are well-founded (Article 15).

If a restructuring agreement is confirmed by the court, the debtor's activities must be restructured in accordance with its provisions, and the rights of creditors holding affected claims must be changed in accordance with the provisions of the confirmed restructuring agreement from the date of the confirmation decision. A confirmed restructuring agreement is binding against all creditors, including those creditors who voted against or did not vote on it. The confirmed restructuring agreement will have no effect on creditors unaffected by its provisions (Article 15). The restructuring agreement will be enforceable against the budgetary creditors (preferred creditors), provided that the legal requirements on state aid are met (Article 15-8).

If, between confirmation of the agreement and the closure of the procedure, any title in the list is found to be anomalous in the any of the following manners, a creditor may challenge the agreement with the syndic judge: i) non-existent or fictitious; ii) in an amount different from its extent; iii) in a different category of claims than the one corresponding to its legal situation.

For a period of three years following confirmation of the plan (or until the end of the plan if earlier), the restructuring administrator will monitor the implementation of the agreement on a quarterly basis and will present to the affected creditors a quarterly analysis report on debtor's performance. The debtor must provide the restructuring administrator with all the information necessary to draft the analysis report, within no more than 15 days from the date of closing the financial statements related to the monitored quarter. Non-communication of information by the debtor is presumed to represent the failure of the agreement (Article 15).

Preventive composition procedure

A restructuring plan is considered to be approved by a class if it is accepted by an absolute majority of the value of the claims of such class (Article 27 (5)). When setting up sub-classes of claims within a class, the class shall be deemed to have voted on the restructuring plan if it is accepted by an absolute majority of the value of the claims of such class (Article 27 (7)). For debtors with a net turnover or gross income of €500,000 or less in the previous year that optout of setting up classes, the plan is accepted if it is voted on by the absolute majority of the amount of the affected claims (Article 27 (9)).

Creditors which control, are controlled by, or are under common control with the debtor, directly or indirectly, may attend the meeting but may vote with regard to the composition only if they would receive less than in the event of insolvent liquidation (bankruptcy) (Article 27 (10)).

Once approved, the restructuring plan shall be confirmed by the syndic judge (Article 28). Any dissenting classes of creditors may be subject to cross-class cram down. If the restructuring plan is not accepted by an absolute majority of the value of the claims of each class, the court can still approve the plan (Article 28) if the following conditions are met: i) creditors in the same category of claims are treated equally and proportionately to their claim; ii) communication of the restructuring plan to all affected parties has been made in accordance with the terms of this law; iii) if there are creditors who did not vote on the restructuring plan or did not participate in the vote, they shall be treated fairly and equitably; iv) the new financing, if any, is justified by the implementation of the restructuring plan and does not unfairly prejudice the interests of the creditors; v) the plan offers reasonable prospects of preventing the insolvency of the debtor and ensuring the viability of the company; vi) the voting conditions have been respected and the division into categories and subcategories of claims has been done legally; vii) the claims proposed not to be part of the restructuring plan are not directly affected by the measures it provides for and the grounds for excluding them from the agreement are well founded; viii) the restructuring plan has been approved by a majority of the categories of claims, one of which must be a category of claims benefiting from preferential causes of action or any category of claims other than the category of claims referred to in Articles 27 (1) (a) and (b), or (4) (e); or, failing that, at least one category of claims with voting rights other than a category of claims which would not receive any payment in the event of bankruptcy; ix) the categories of claims which have not voted on the restructuring plan are treated more favourably than any other lower-ranking category of claims as determined by the ranking provided for in Articles 27 (2) (a) and 27 (b) (4); and x) the restructuring plan has been voted by at least 30 per cent of the total affected claims.

If a restructuring plan is confirmed by the court, the debtor's activity must be restructured in accordance with its provisions, and the rights of creditors holding affected claims must be changed in accordance with the provisions of the restructuring plan confirmed from the date of delivery of the confirmatory decision. A confirmed restructuring plan applies to all creditors, including those creditors who voted against or did not vote on it. The confirmed restructuring plan will have no effect on creditors unaffected by its provisions. The restructuring plan will be enforceable against the budgetary creditors (preferred creditors), provided that the legal provisions on state aid are complied with (Article 33).

Creditors whose claims are not affected are obliged to notify the debtor prior to the opening of any enforcement proceedings. No later than 30 days after receipt of the notification, the debtor may conduct negotiations on joining the restructuring plan, including by laying down conditions for granting appropriate protection, in which creditors are obliged to participate (Article 30 (1)).

Similar to the restructuring agreement procedure, the insolvency practitioner will present to the affected creditors a quarterly analysis report on performance by the debtor under the restructuring agreement and maintenance of the viability of the business by means the restructuring. The debtor must however provide the restructuring administrator with all the information necessary to draft the analysis report, within no more than 15 days from the date of closing the financial statements related to the monitored quarter. Non-communication of information by the debtor is presumed to represent the failure of the agreement (Article 33).

Judicial reorganisation procedure

A judicial reorganisation plan is considered accepted by a class if it is accepted by an absolute majority of the value of the claims of the class. Creditors which control, are controlled by or are under common control with the debtor, directly or indirectly, may attend the meeting but may vote with regard to the plan only if they would receive less than in an insolvent liquidation (Article 138).

Once approved, the plan has to be confirmed by the court, which may require a professional to express an opinion on the possibility of carrying out the plan before confirming it. Majority approval depends on the number of classes as follows: i) Where there are five classes, the plan is deemed to be accepted if at least three classes accept the plan, provided that at least one of the disadvantaged classes accepts the plan and creditors representing at least 30 per cent of the total value of the insolvency estate accept the plan. ii) If there are three classes, the plan is deemed to be accepted if at least two classes accept the plan, provided that one of the disadvantaged classes accepts the plan and creditors representing at least 30 per cent of the total value of the insolvency estate accept the plan. iii) If there are two or four classes, the plan is deemed to be accepted if at least half of the number of classes voted in favour, provided that one of the disadvantaged classes accepts the plan and creditors representing at least 30 per cent of the total value of the insolvency estate accept the plan (Article 139).

Each of the disadvantaged classes of claims which has rejected the plan must be subject to fair and equitable treatment through the plan. A disadvantaged class is a class for which the reorganisation plan provides at least one of the following: a reduction in the amount of the claim to which the creditor is entitled and/or a reduction in guarantees or rescheduling of payments to the detriment of the creditor, without its express agreement. Fair and equitable treatment exists where, among other matters, none of the classes rejecting the plan or any claim that rejects the plan receive less than they would have received in the event of liquidation. The judicial reorganisation plan binds all creditors, including secured creditors, if the requisite majorities in favour of the plan described above are achieved. Creditors who voted against the plan can raise legal objections before the syndic judge, requesting rejection of the reorganisation plan (Article 138).

The implementation of the reorganisation plan is supervised by an insolvency practitioner, who will submit quarterly reports on the performance of the plan to the creditors for approval. If the plan is not executed, the insolvency practitioner can propose to the judge either the modification of the plan or the opening of the bankruptcy procedure (Article 144).

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

Restructuring agreement procedure

There are no restrictions on the timeline for negotiating an arrangement with the debtor and one or more creditors. After the restructuring agreement is communicated to the creditors whose claims are affected, legally they must have at least 20 days to vote for the agreement. Within a maximum of three days following the voting deadline, the debtor must submit to the competent court an application for confirmation of the restructuring agreement. The confirmation of the restructuring agreement is judged in a non-contentious proceeding, without summoning the parties, by a syndic judge within a maximum of 10 days from the date of registration of the application. The restructuring agreement, approved by the creditors and confirmed by the syndic judge, is communicated to the affected creditors and to the creditors holding unaffected claims, through the restructuring manager, within 48 hours of the decision (Article 15-7). For a period of three years after confirmation of the plan (or until the end of the plan if earlier) the restructuring manager monitors the implementation of the restructuring agreement (Article 15-8).

Preventive composition procedure

Within 60 days of the opening of this procedure, the composition administrator and the debtor must prepare the restructuring plan for creditors (Article 23). The period for conducting the negotiations on the draft restructuring plan and achieving creditors' approval may not exceed 60 calendar days (Article 26).

From the date of the opening of the procedure, all proceedings against the debtor are suspended for a maximum period of four months (but no later than the date of delivery of a decision approving the restructuring plan or closing the procedure), with the exception of salary claims, suspension of which is not automatic. Under some circumstances, the syndic judge may extend or grant a new stay for a maximum of 12 months from the date of the opening of the preventive arrangement procedure, at the request of the debtor, creditor or composition administrator. During the stay, insolvency proceedings cannot be commenced against the debtor, and interest payments, late payment penalties and any other expenses related to the affected claims are suspended until the approval of the plan. After the approval of the restructuring plan, this matter should be dealt with by the plan (Article 25 (11)).

The restructuring plan must be implemented within 48 months from the date of court's approval, with the possibility of a 12-month extension. In the first year, the debtor must repay creditors at least 10 per cent of the sum of the claims confirmed by the restructuring plan (Article 24 (7)).

Judicial reorganisation procedure

The maximum duration of the observation period following the opening of insolvency proceedings is 12 months (Article 112 (3)). The judicial reorganisation plan must be submitted within 30 days after publication of the final table of creditor claims (Article 132). This deadline may be extended by the judge by a maximum of 30 days (Article 132).

The implementation of the reorganisation plan cannot exceed three years calculated from the date of the confirmation of the plan For debtors which are legal entities, the implementation of the plan may take up to four years calculated from the date of confirmation of the plan. These time limits may also be extended, with the express consent of the creditors, if initially they were shorter than four years. Changes to the reorganisation plan, including its extension, can be made at any time during the reorganisation procedure, without exceeding a maximum total duration of the plan of five years from the initial confirmation (Articles 133 and 139).

There is no prescribed maximum period for the moratorium. It remains in place for the duration of the procedure.

Out-of-court restructuring procedure

The debtor has the obligation to notify the competent fiscal body of its intention to restructure its budgetary obligations, on a specific period each year, as defined in the Ordinance, under penalty of losing the right to restructure its obligations. After receiving the notification from the debtor, the competent fiscal body verifies whether the debtor has fulfilled its fiscal declaration obligations, if the debtor has recorded in its accounts all payments performed, earnings and any other necessary operations to determine with certainty the budgetary obligations that can be restructured. Within no more than five working days from the date of submission of the notification, the competent fiscal body issues the fiscal attestation certificate which is communicated to the debtor and includes the claims that can be restructured (Article 3 of the Ordinance). The request for the restructuring of budgetary obligations is resolved by the competent fiscal authority within a maximum of 30 days from the date of its registration (Article 5 of the Ordinance). The debtor has the obligation to fulfil the measures provided in the restructuring plan within the terms established therein (Article 9 of the Ordinance). Upon successful completion of the restructuring plan the fiscal authority issues a relative decision (Article 18 of the Ordinance).

If the debtor does not submit a request for restructuring of budgetary claims within the prescribed periods as per the Ordinance, or the fiscal authority rejects the restructuring plan or the restructuring plan fails to be implemented, the fiscal authority has the obligation to request the opening of insolvency proceedings (Article 21 of the Ordinance).

Does the insolvency legislation facilitate cross-border insolvency?

Yes, cross-border insolvency is regulated in Title III of the Insolvency Law. As a member of the European Union, Romania is subject to **Regulation (EU) 2015/848** on insolvency proceedings, which governs the coordination of cross-border insolvency proceedings within the EU.

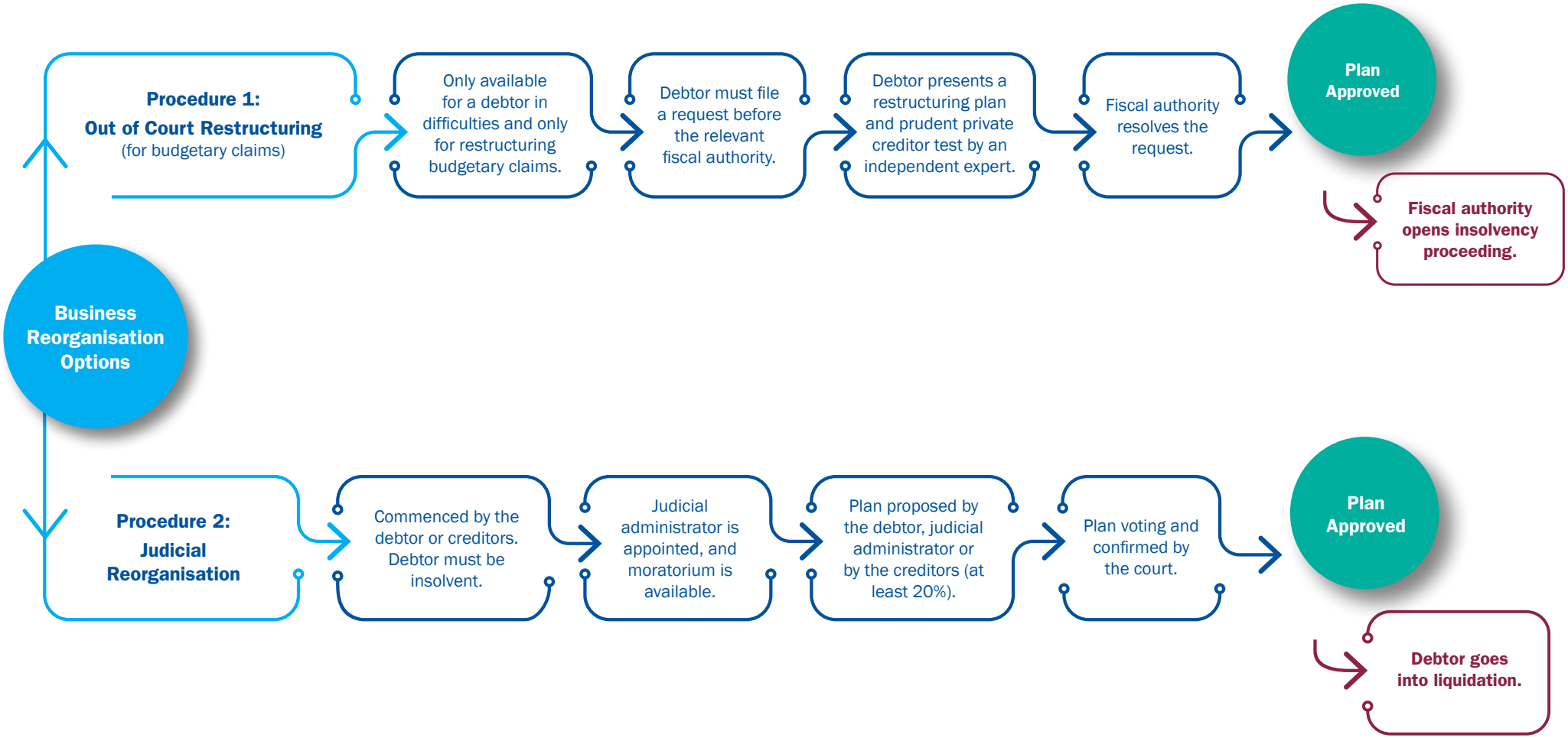
Romania has adopted the UNCITRAL Model Law on Cross-Border Insolvency. However, Romania has not adopted the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgements or the UNCITRAL Model Law on Enterprise Group Insolvency (see below).

Model Law	Official adoption
UNCITRAL Model Law on Cross-Border Insolvency (1997)	✔
UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018)	✖
UNCITRAL Model Law on Enterprise Group Insolvency (2019)	✖

Are there any special provisions for (M)SMEs?

No there are no special provisions for (M)SMEs. However certain provisions in the Insolvency Law facilitate insolvency proceedings for smaller companies with either a net turnover or a gross income of €500,000 or less.

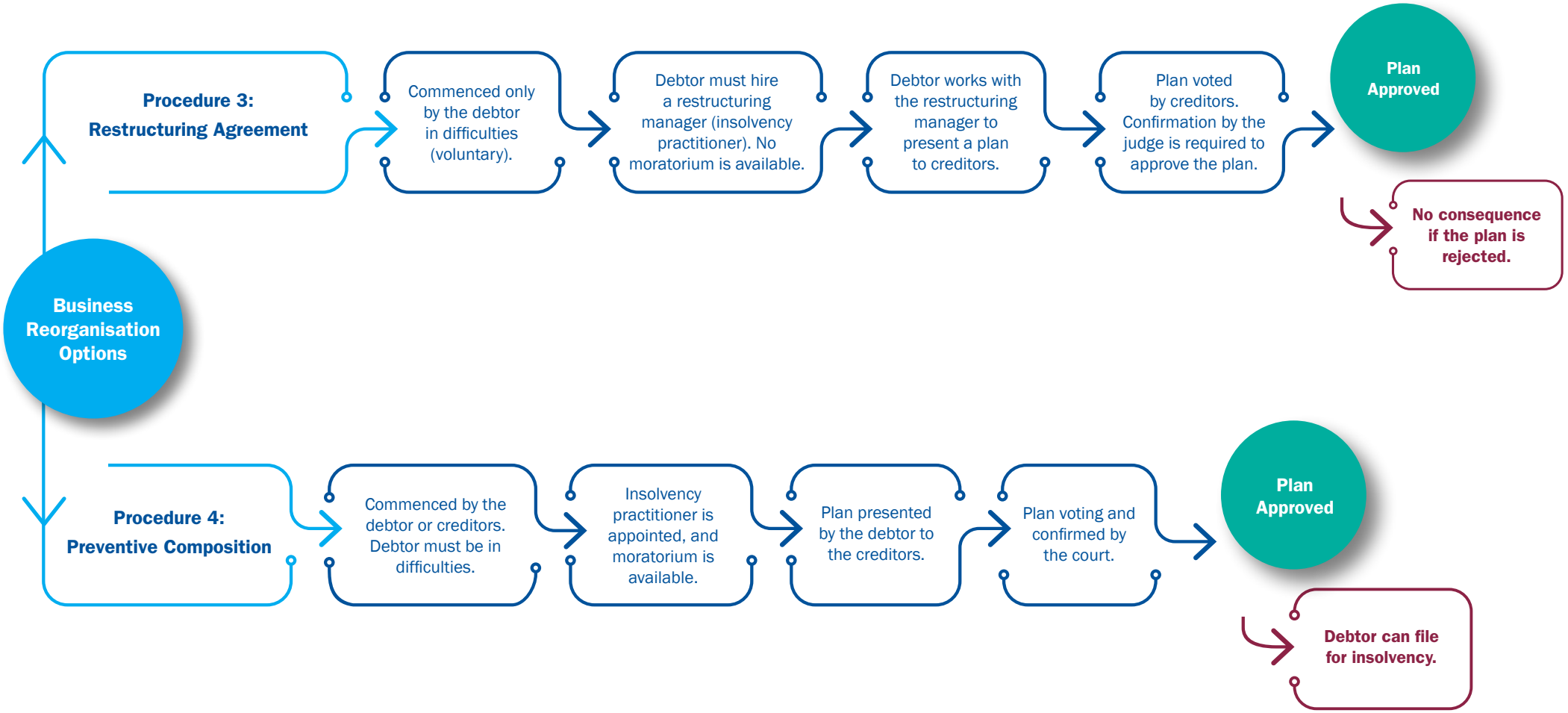
Overview of Romanian Business Reorganisation Procedures*



* 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.

** The court has the power to automatically reschedule the claims of creditors (other than creditors under a qualified financial contract or bilateral netting transactions) which did not sign the preventive composition plan, including those creditors that did not participate in the composition for a maximum of 18 months.

Overview of Romanian Business Reorganisation Procedures*



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