



Restructuring & Insolvency Comparative Guide



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1. Legal framework

1. 1. What domestic legislation governs restructuring and insolvency matters in your jurisdiction?

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Bankruptcy and insolvency cases in Armenia are governed by the Law on Bankruptcy and, to the extent not regulated by this law, by the Civil Procedure Code. Further, the Law on Public Auctions regulates the sale of assets of the bankrupt entity. Some sectors (primarily finance) also have specific regulations (see question 1.3).

1. 2. What international / cross-border instruments relating to restructuring and insolvency have effect in your jurisdiction?

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The Law on Bankruptcy applies to bankruptcy relations where foreign citizens or stateless persons are involved in the capacity of debtor, unless otherwise provided for by the international treaties to which Armenia is a party. No specific conventions regulating cross-border procedures are in force at the time of writing.

1. 3. Do any special regimes apply in specific sectors?

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The law may specify rules other than those set out in the Law on Bankruptcy for insolvency and bankruptcy proceedings that involve any of the following parties in the capacity of debtor:

- insurance undertakings;
- charitable, investment or pension funds;
- operators of a regulatory market for investment companies of securitisation funds;
- the Central Depository;
- pawnshops;
- natural monopolies;
- parties with a dominant position in the market; or
- non-governmental organisations.

The bankruptcies of banks, credit institutions, investment companies and insurance undertakings are regulated by the Law on the Bankruptcy of Banks, Credit Institutions, Investment Companies and Insurance Undertakings.

Further, the law explicitly states that the state and communities may not be subject to bankruptcy proceedings.

1. 4. Is the restructuring and insolvency regime in your jurisdiction perceived to be more creditor friendly or debtor friendly?

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In general, the regime is considered to be balanced between the two. In practice, however, debtors can extend the process for a relatively long time.

1. 5. How well established is the legal regime and infrastructure relevant to restructuring and insolvency in your jurisdiction (e.g. extent of recent legislative changes, availability of specialist judges / courts / advisers)?

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The legal regime is well established, as there is a special Bankruptcy Court in Armenia. This means that all bankruptcy matters must be heard within the same proceedings by the same judge. This shortens the timeframes and increases efficiencies.

2. Security

2. 1. What principal forms of security interest are taken over assets in your jurisdiction?

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Collateral and guarantees.

2. 2. How can those security interests be enforced (and what factors could complicate or prevent this process)?

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In bankruptcy proceedings, through auction or direct sale; or in case of non-application of a moratorium outside bankruptcy proceedings.

3. Restructuring

3. 1. Are informal workouts available in your jurisdiction? If so, what forms do they typically take, and what are the benefits and drawbacks as compared to formal restructuring proceedings?

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No.

3. 2. What formal restructuring proceedings are available in your jurisdiction, and what are the benefits and drawbacks of each?

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Restructuring is possible through a financial recovery plan, which sets out:

- the actions to be undertaken to facilitate the financial recovery of the debtor company or individual;
- the order in which these actions will be pursued;
- the sequence in which obligations will be fulfilled;
- the schedule; and
- the amount.

The debtor is thus afforded the opportunity to rehabilitate the company through the measures specified in the plan so that it can continue its normal activities, while the creditors can receive repayment of their obligations without litigation or additional steps.

3. 3. How, by whom and on what grounds are formal restructuring proceedings initiated? What are the main preconditions for success?

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By the debtor. A detailed plan on the proposed repayment mechanisms must be submitted.

3. 4. What are the effects of the commencement of formal restructuring proceedings, both for the debtor and for creditors?

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There are no strict restrictions or strict transaction rules for the debtor. The latter can act freely within the parameters of the financial recovery plan; and the creditors will receive a court-approved programme which serves as a guarantee of repayment of their claims, breach of which will entitle them to file for bankruptcy or other proceedings. The amount of a claim whose legality has already been confirmed by the court must be accepted by the debtor.

3. 5. Does a moratorium or stay apply and, if so, what is its scope? Are there exceptions?

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Yes. However, a moratorium does not cover:

- alimony payments;
- the remuneration of the temporary administrator; or
- administrative and other expenses necessary for the current activities of the debtor as set out in the financial recovery plan.

3. 6. What process do restructuring proceedings typically follow (including likely length of process and key milestones)?

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The timeframe of a financial recovery plan may not exceed 24 months, unless its effective duration has been extended for a period of up to 12 months in the manner prescribed by law.

3. 7. What are the roles, rights and responsibilities of the following stakeholders in restructuring proceedings? (a) Debtor, (b) Directors of the debtor, (c) Shareholders of the debtor, (d) Secured creditors, (e) Unsecured creditors, (f) Employees, (g) Pension creditors, (h) Insolvency officeholder (if any), (i) Court.

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(a) Debtor

The debtor can file objections, challenge actions, challenge decisions and appeal. It must not obstruct the proceedings and must provide all necessary documents and information.

(b) Directors of the debtor

The directors of the debtor must:

- facilitate the debtor's normal operation for the duration of the financial recovery plan; and
- obtain consent for transactions related to the management of company property.

(c) Shareholders of the debtor

Shareholders of the debtor are entitled to satisfaction of their claims.

(d) Secured creditors

Secured creditors are entitled to satisfaction of their claims from the proceeds of sale of the pledged property.

(e) Unsecured creditors

Unsecured creditors are entitled to satisfaction of their claims.

(f) Employees

Employees are entitled to satisfaction of their claims and payment of salary.

(g) Pension creditors

Pension creditors are entitled to satisfaction of their claims.

(i) Court

The court issues decisions approving, authorising or prohibiting actions, and upholds the rule of law.

3. 8. Can restructuring proceedings be used to “cram down” and bind dissentient creditors to a transaction supported by other creditors? Are creditors separated into classes for the purposes of voting in the proceedings? What are the relevant voting thresholds? Is “cross-class cramdown” available?

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It is not possible to use restructuring proceedings to ‘cram down’ and bind dissentient creditors to a transaction supported by other creditors.

In general, creditors are separated into different classes, but there is no special classification for voting among them. One hundred per cent of the votes at the creditors’ meeting belong to the creditors in attendance at the first meeting, distributed among them in proportion to their claims as registered.

Creditors vote in proportion to their claims, with equal opportunities afforded to all.

3. 9. Can restructuring proceedings be used to compromise secured debt?

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No.

3. 10. Can contracts / leases be disclaimed or otherwise addressed through restructuring proceedings?

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Yes.

3. 11. Can liabilities of third parties (e.g. guarantors) be released through restructuring proceedings?

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No.

3. 12. Is any protection and/or priority afforded to the providers of new money in the context of restructuring proceedings (i.e. is “DIP financing” available)?

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No.

3. 13. How do restructuring proceedings conclude?

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In writing; court approval must also be obtained.

4. Insolvency

4. 1. What types of insolvency proceeding are available in your jurisdiction, and what are the benefits and drawbacks of each?

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A debtor may be declared bankrupt by a court judgment either:

- on its own initiative (application for voluntary bankruptcy); or
- upon the claim of a creditor (application for compulsory bankruptcy), if the debtor is insolvent.

In both cases the debtor may be declared bankrupt based on an application for compulsory bankruptcy if:

- it has delayed, for 90 days or more, the fulfilment of indisputable payment liabilities which exceed 200 times the minimum monthly salary as defined by law; and
- this delay continues at the time the judgment is made, even if the debtor is not insolvent.

4. 2. How, by whom and on what grounds are insolvency proceedings initiated? Can the instigating party (or any other parties) select the identity of the relevant insolvency officeholder?

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A debtor may be declared bankrupt by a court judgment either:

- on its own initiative (application for voluntary bankruptcy); or
- upon the claim of a creditor (application for compulsory bankruptcy), if the debtor is insolvent.

4. 3. What are the effects of the commencement of insolvency proceedings, both for the debtor and for creditors?

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Acceptance of the bankruptcy application has the following immediate effects:

- The debtor is prohibited from satisfying, in cash or in any other manner, the claims of creditors in accordance with its contractual or other liabilities without a court decision, with the exception of liabilities relating to its day-to-day operations;
- Any alienation, lease, pledge or other type of encumbrance of the debtor's property, as well as of shares (stocks, equity shares and other securities defined by law) in an organisation owned by the participant (participants) of the debtor, will be prohibited without a court decision, except for cases listed in Article 55(2) of the Law on Bankruptcy;
- All enforcement proceedings will be suspended and indisputable recoveries determined by a writ of execution or other documents will be prohibited; and
- The offsetting of any liability assumed by a creditor with respect to the debtor prior to submission of the bankruptcy application with claims owed towards the debtor will be prohibited.

From the moment the declaration of bankruptcy enters into legal force:

- the debtor is prohibited from satisfying, in cash or in any other manner, the claims of creditors in accordance with its contractual or other liabilities without a court decision;
- the initiation of civil or administrative proceedings giving rise to liabilities *in rem* to the debtor, where the latter is a defendant or a third party on the side of the defendant that does not have independent claims against the subject of dispute as regards the creditor, is prohibited;
- civil proceedings relating to the bankruptcy proceedings or that may affect their progress and giving rise to liabilities *in rem* to the debtor, where the latter is a defendant or a third party on the side of the defendant that does not have independent claims against the subject of dispute as regards the creditor, will be terminated. They may be resumed once the bankruptcy proceedings have closed if this results in the financial recovery of the debtor. Otherwise, the court judgment closing the bankruptcy proceedings will serve as grounds to terminate the civil proceedings regarding the debtor;
- the calculation, payment or levying of surcharges and other financial sanctions, as well as of accrued interest subject to calculation, payment or levying for failure to fulfil or improper fulfilment of cash liabilities (including secured liabilities) and liabilities pertaining to mandatory payments, including taxes, duties and other mandatory payments, will be suspended; and
- all enforcement proceedings relating to property will be terminated.

The moratorium does not cover:

- the execution of alimony;
- the remuneration of the temporary administrator; or
- administrative and other expenses necessary for the current activities of the debtor as set out in the intermediate allocation plan.

From the moment the declaration of bankruptcy enters into legal force, the submission of financial and other statements must be effected by an executive of the debtor or by the individual entrepreneur, who will be

liable for failure to submit or improper submission of the statements, as prescribed by law.

From the moment of suspension of the debtor's activity, the administrator, on behalf of the debtor, must submit:

- information on additional liabilities that arise in the course of the bankruptcy proceedings with regard to tax and other mandatory payments; and
- financial and other reports as prescribed by Armenian law, in case of the resumption of activities by the debtor.

The moratorium will continue to apply until the bankruptcy proceedings have closed.

4. 4. Does a moratorium or stay apply and, if so, what is its scope? Are there exceptions?

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Yes. The moratorium does not cover:

- the execution of alimony;
- the remuneration of the temporary administrator; or
- administrative and other expenses necessary for the current activities of the debtor as set out in the intermediate allocation plan.

4. 5. What process do insolvency proceedings typically follow (including likely length of process and key milestones)?

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Liquidation proceedings will end in either the dissolution of the debtor or the recovery of the debtor.

4. 6. What are the respective roles, rights and responsibilities of the following stakeholders during the insolvency proceedings? (a) Debtor, (b) Directors of the debtor, (c) Shareholders of the debtor, (d) Secured creditors, (e) Unsecured creditors, (f) Administrator, (g) Employees, (h) Pension creditors, (i) Insolvency officeholder, (j) Court.

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(a) Debtor

The debtor can file objections, challenge actions, challenge decisions and appeal. It must not obstruct the proceedings and must provide all necessary documents and information.

(b) Directors of the debtor

The directors of the debtor must ensure the normal operation of the company and obtain consent for transactions relating to the management of company property.

(c) Shareholders of the debtor

The shareholders of the debtor are entitled to satisfaction of their claims.

(d) Secured creditors

Secured creditors are entitled to satisfaction of their claims from the proceeds of sale of the secured assets.

(e) Unsecured creditors

Unsecured creditors are entitled to satisfaction of their claims.

(g) Employees

Employees are entitled to satisfaction of their claims and payment of salary.

(h) Pension creditors

Pension creditors are entitled to satisfaction of their claims.

(i) Insolvency officeholder

The bankruptcy administrator can convene a creditors' meeting and preside over it:

- upon the request of the court;
- upon his or her initiative; or
- at the request of creditors holding more than 5% of the claims against the debtor.

If the creditors' meeting is convened in order to file a motion to dismiss the administrator, the meeting will be presided over by the largest creditor present at the meeting with the right to vote.

The bankruptcy administrator also has the power to:

- file a bankruptcy application with the court in cases provided for by the Law on Bankruptcy;
- apply to courts on behalf of the debtor on issues requiring a solution through judicial procedure, participate in court hearings relating to the debtor where the latter is a claimant or a third party with independent claims against the subject of dispute, and act on behalf of the debtor without a power of attorney;
- for the purpose of ensuring proper implementation of his or her powers, involve relevant professional organisations or specialists and other employees, and pay them at the expense of the debtor;
- arrange the inventory of, and take measures for ensuring the maintenance of, property of the debtor;
- analyse the financial condition of the debtor, the reasons for bankruptcy and the financial, economic and investment activities of the debtor and its position in the commodity markets;
- keep a register of creditors' claims;
- check the reasoning of claims against the debtor;
- open a special bankruptcy account for the debtor in one of Armenia's five leading commercial banks in

- terms of their fixed capital and deposit in that account all funds addressed to the debtor;
- attach and lift attachments from the property and funds of the debtor based on a court decision;
 - supervise the performance of duties by the debtor's management; and
 - exercise other powers prescribed by law.

(j) Court

The court has the power to make decisions approving, authorising or prohibiting actions, and to uphold the rule of law

4. 7. What is the process for filing claims in the insolvency proceedings?

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Creditors must submit their claims to the court within one month of the declaration of bankruptcy.

The following information must be included when submitting the claim:

- the details of the creditor submitting the claim:
 - for a legal entity, its name and location; and
 - for a natural person, his or her name and place of residence;
- the obligation on which the claim is based and the period for performance;
- the amount of the claim, indicating separately the amount of the principal debt, losses and penalties (eg, fines, penalties), with appropriate calculations; and
- the circumstances justifying the claim.

Substantiating documentation must be attached to the claim. All documents must be submitted in triplicate.

Submission of the claim must be registered with the court in the prescribed manner.

Individual civil cases are initiated, examined and resolved in accordance with the procedure set out in the Civil Procedure Code.

4. 8. How are claims ranked in the insolvency proceedings? Do any claims have “super priority” and is there scope for subordination by operation of law (e.g. equitable subordination)?

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As a general classification, claims are divided into three main categories:

- secured (collateral, guarantee);
- unsecured; and
- subordinated unsecured.

Unsecured claims, in turn, are classified into nine sub-categories.

Secondary unsecured claims are classified into four sub-categories.

The claims in each category will be satisfied once those in the preceding category have been satisfied in full. Therefore, creditors whose claims are ranked in the earlier categories have an advantage in terms of satisfaction the primary claim, considering the importance of the claims, for example, the claims of the citizens before whom the debtor is responsible for causing damage to their life or health are registered in the second queue. In such a case the demand must be met first.

4. 9. What is the effect of insolvency proceedings on existing contracts? Is the counterparty free to terminate? Can they be disclaimed?

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The debtor is prohibited from satisfying the claims of creditors under any of its contractual or other obligations without a court decision, except as specified in the financial recovery programme. Where the administrator is a party to a contract, that contract can be concluded or terminated with its consent.

4. 10. Can transactions entered into by the debtor prior to be insolvency be challenged and set aside? What are the relevant grounds / look-back periods / defences?

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Yes. Within six months of approval of the final list of creditors' claims, the administrator can apply to court to claw back:

- gratuitous transfers (including non-monetary transfers) made by the debtor to related persons in the five years prior to the declaration of bankruptcy;
- gratuitous transfers (including non-monetary transfers) made by the debtor to any third party in the three years prior to filing of the bankruptcy application;
- any transfer (including a non-monetary transfer) to a creditor in the 90 days prior to filing of the bankruptcy application (or in the preceding 12 months if the transfer was made to a related party), where:
 - the debtor was insolvent at the time of execution; and
 - the creditor received significantly more than it would have done in the bankruptcy proceedings in case of liquidation of the debtor.

However, in such cases clawback is not possible if:

- at the same time as the transfer, the creditor transferred other equivalent property to the debtor;
- after the debtor had satisfied an obligation previously assumed towards the creditor, the creditor transferred new property that was not the subject of pledge to the debtor;
- the debtor, in the performance of its normal activities, satisfied an obligation owed to the creditor during that period in accordance with the normal customs of business;
- an obligation not exceeding AMD 200,000 owed to the creditor was satisfied by the transfer;
- the transfer involved the satisfaction of a pledge on the debtor's assets and the rights of unsecured creditors were not violated as a result (ie, the value of the debtor's unsecured liabilities did not exceed the value of its unsecured property); or

- obligations relating to taxes, duties, other mandatory payments or the payment of administrative fines were satisfied by the transfer;
- damage caused to the debtor by transactions, transfers or the alienation of property in the three years prior to the declaration of bankruptcy which resulted from the difference in market value at the time of the transaction, except where the transaction was concluded on the basis of a public auction; or
- secured assets that were confiscated in accordance with a settlement agreement or security agreement, where:
 - the settlement agreement or security agreement was concluded in the 90 days prior to filing of the bankruptcy application;
 - the debtor's bankruptcy or the possibility of bankruptcy could have been predicted at the time of the confiscation; and
 - the conclusion of the agreement was not in the interests of the debtor and was pursued solely for the purpose of withdrawing the assets from the bankruptcy process.

The administrator may apply to court to claw back a specific transaction unless the creditors' meeting has decided that it should refrain from applying to the court with a specific demand. The creditors' meeting may decide this if the cost of a clawback application would reasonably exceed the value that would be received as a result.

A clawback further may not be effected if the purpose of the transaction was to satisfy the secured claims of a bank or credit organisation.

4. 11. How do the insolvency proceedings conclude? Can any liabilities survive the insolvency proceedings?

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The insolvency proceedings will end in either the dissolution or the recovery of the debtor.

Liabilities can survive the insolvency proceedings if a moratorium is not used.

5. Cross-border / Groups

5. 1. Can foreign debtors avail of the restructuring and insolvency regime in your jurisdiction?

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Yes.

5. 2. Under what conditions will the courts in your jurisdiction recognise and/or give effect to foreign insolvency or restructuring proceedings or otherwise grant assistance in the context of such proceedings?

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Judgments in foreign bankruptcy proceedings will be recognised by the Armenian courts in accordance with the international treaties to which Armenia is a party or, in their absence, with the principle of reciprocity.

5. 3. To what extent will the courts cooperate with their counterparts in other jurisdictions in the case of cross-border insolvency or restructuring proceedings?

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In accordance with the international treaties to which Armenia is a party or, in their absence, with the principle of reciprocity.

5. 4. How are corporate groups treated in the context of restructuring and insolvency proceedings? If there is no concept of a group proceeding (or consolidation), is there any regime through which insolvency officeholders must / may cooperate?

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In accordance with the principle of reciprocity.

5. 5. How is the debtor's centre of main interests determined in your jurisdiction?

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Based on the debtor's accounting documents.

5. 6. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

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In same way as Armenian creditors.

6. Liability risk

6. 1. What duties do the directors of the debtor have when the company is in the "zone of insolvency" (or actually insolvent)? Do they have an obligation to commence insolvency proceedings at any particular time?

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If the debtor is a legal entity, its directors must apply to court for the initiation of bankruptcy proceedings if

there are grounds for bankruptcy or a risk of bankruptcy.

The liquidator of the debtor must likewise apply to court for a declaration of bankruptcy if, during the liquidation, it turns out that the value of the property of the liquidated debtor is insufficient to satisfy creditors' claims in full.

In both cases, the application must be submitted to court within two months of discovery of the relevant grounds.

6. 2. Are there any circumstances in which the directors could incur personal liability in the context of a debtor's insolvency?

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Yes, if the signs of possible bankruptcy arose as a result of their actions

6. 3. Is there any scope for any other party to incur liability in the context of a debtor's insolvency (e.g. lender or shareholder liability)?

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The liquidator of the debtor must apply to court for a declaration of bankruptcy if, during the liquidation, it turns out that the value of the property of the liquidated debtor is insufficient to satisfy creditors' claims in full.

7. Other

7. 1. Is it possible to effect a "pre-pack" sale of assets, and is it possible to sell the assets free and clear of security, in restructuring and insolvency proceedings in your jurisdiction?

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No.

7. 2. Is "credit bidding" permitted?

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No.

8. Trends and predictions

8. 1. How would you describe the current restructuring and insolvency landscape and

prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

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As far as we are aware, the only anticipated changes to the Law on Bankruptcy concern its alignment with other laws. However, there is no draft law in progress to address systemic or legislative gaps.

9. Tips and traps

9. 1. What are your top tips for a smooth restructuring and what potential sticking points would you highlight?

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The grounds for a bankruptcy claim are sometimes challenged by the submission of unfounded lawsuits through artificial means. Therefore, a bankruptcy application should not be rejected merely because another court has filed an unfounded claim upon receiving a bankruptcy application, presumably challenging the transactions that underpin the bankruptcy application.



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