GEORGIA

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

Contributed by Nodia, Urumashvili and Partners LLC

Contents

Nodia, Urumashvili and Partners LLC is a full-service law firm based in Georgia. The firm is renowned for its outstanding practices and expertise in banking and finance, real estate and construction, restructuring and insolvency, corporate and tax law along with a well-established dispute resolution practice. The firm also has a particularly strong presence in the cryptocurrency and blockchain technology sector. The firm offers full legal support, straightforward advice and tailor-made solutions to a diverse client base across a wide range of industries. The firm was founded in 2005 and renamed in 2010 when the Eprem Urumashvili joined the firm. Today, the firm is led by a six-partner team.

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1. Market Trends and Developments

1.1 State of the Restructuring Market

Standing at the crossroads of the deepening relationships between the European Union (EU) and Georgia, in recent years the country has faced several important legal and economic challenges. Trying its best to succeed in the conditionality policy envisaged by the EU-Georgia Association Agreement (AA), the process of harmonising the corresponding EU legal acquis into domestic legal culture has become one of the focal points. Deeming Europeanisation as a positive development, Georgia is currently undergoing legal gap-filling procedures with country-specific modifications.

The changes concern almost all sectors, however, new labour, competition, insolvency, consumer protection, tax and financial regulations are mostly effective on market operation. From January 2017, the system of income taxes has been totally modernised as Georgia switched to the Estonian Model, making the tax law more appealing for investment opportunities. In the meantime, the banking sector has also experienced serious modifications. New initiatives by the National Bank of Georgia (NBG) lay down the provisions on responsible lending to natural persons, stressing the solvency analysis of a borrower. Further, new labour safety standards have been adopted focusing on the sanctions, duties and obligations of the actors. Last but not least, the expected developments in competition law should be mentioned. These enlarge the activity scope of the National Competition Authority by giving additional sanctioning powers and modify the M&A provisions in accordance with EU standards. Consequent to this legal modernisation, the business sector finds it difficult to align their policies with new regulations and obligations, and the need for additional adaptability time has had a direct effect on the restructuring market.

Beyond the legal implications, the current economic and political situation also serves as a push factor towards financial restructuring and insolvencies. The existing thresholds are mainly related to the Russian ban on flights to Georgia and restrictions on certain products in response to the mass protest against Russian occupation. These distortions have caused a decrease in tourist flows and exporting opportunities.

The national currency (GEL) depreciation has had drastic impacts on the importing opportunities of businesses. The state program of de-dollarisation posed by the NBG has significantly decreased the services and production related to the payments by instalments. It has also impacted sales in the real estate sector due to the complications in loan issuance procedures. Despite these challenges, it should be noted, that the business sector continues to undergo adaptation and the market is enriched with the new products and services.

In addition to the internal financial problems and high unemployment rate in the country, the restructuring market is prejudiced by external factors. Key trade partners such as Turkey, Russia and other neighbouring countries are themselves enduring economic and political difficulties, and this is reflected in the investment and trade opportunities in Georgia.

1.2 Changes to the Restructuring and Insolvency Market

The process of Europeanisation has sparked a modernisation period for Georgian insolvency law. In the course of adopting new legislative proposals, the insolvency regulations have developed such that bankruptcy is no longer the only option for the debtor. Georgian legislators have, step-by-step, introduced the pre-insolvency package with a growing emphasis on the early resolution of debtors' indebtedness. The context reflected in the May 2017 changes, along with applying for bankruptcy, gives a debtor the option to request rehabilitation/restructuring from the outset. Practice shows that enabling restructuring has contributed to the debtor's accountability to save the company from insolvency.

The second most significant amendment concerns the annulment of the contracts that are inevitable for the proper functioning of an enterprise. According to these changes, the creditor may no longer request an annulment of the contract only by virtue of the opening the restructuring process.

It should also be noted that, in co-operation with Ministry of Justice of Georgia, the National Enforcement Bureau, The Ministry of Economy and Sustainable Development and lawyers practicing in this area, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) established a working group that drafted new law on insolvency. At the moment, it is in the process of being reviewed. It is worth mentioning that insolvency packages for private persons are also included.

2. Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

2.1 Overview of Laws and Statutory Regimes

The current Law of Georgia on Insolvency Proceedings, 2007, serves the objective to "equally protect the rights of debtors and creditors, to resolve future financial problems if possible and to satisfy creditors' claims and if the latter is impossible- to satisfy creditors' claims via distribution of the among generated from sale of debtor's property". It contains provisions regarding initiating general insolvency proceedings by debtors and creditors. The insolvency proceedings can lead either to bankruptcy proceedings or to rehabilitation proceedings, depending on the decision of a Conciliа-

tion Council, which should be made within two months of opening the insolvency proceedings.

The Law of Georgia on Insolvency Proceedings applies for the Insolvency of commercial entities/companies, non-commercial legal entities, unregistered unions and co-partnerships and individual entrepreneurs. The Law does not apply to physical persons, legal entities of public law and financial institutions. For banks, non-banking deposit institutions and insurance companies, insolvency issues are regulated by the NBG regulations.

2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

Current Law does not currently provide voluntary restructuring, reorganisation, insolvency, receivership and similar proceedings. However, new Insolvency Law, which is substantially redrafted and a in places completely new, provides voluntary insolvency proceedings – an insolvent company can enter into a company voluntary arrangement (CVA).

2.3 Obligation to Commence Formal Insolvency Proceedings

A debtor's director is obliged to file for insolvency proceedings, without delay, once its financial condition meets the statutory criteria for insolvency and in all cases, no later than three weeks after having determined that the debtor is insolvent.

The Criminal Code of Georgia contains provisions in case of failure to file an application for initiating of insolvency proceedings by the director in case of insolvency, if there is a harm foreseen for delay.

In case a delay in filing for insolvency by an insolvent entity is influenced by a director of the entity, the director could also be subject to claims for damages by the creditors due to director's liability.

2.4 Procedural Options

A debtor is given two options for triggering the proceedings: applying for bankruptcy; and requesting the rehabilitation/restructuring.

2.5 Commencing Involuntary Proceedings

A single creditor or a group of creditors can file for insolvency only if certain requirements are met. In particular:

- for a revenue service, if the amount of debt is no less than GEL50,000 and at least 60 calendar days have passed since the due date;
- for a creditor, if they present at least two valid court decisions rendered in favour of other creditors, with the total amount exceeding GEL50,000;
- a creditor whose claim, according to the last financial statements, exceeds 30% of total claims to the debtor and at least 30 calendar days have passed since the due date;
- two creditors together with total claims more then GEL150,000, where at least 30 calendar days have passed since the due date and the debtor has not made a written counterclaim against creditor's claim;
- at least three creditors together with total claims more than GEL50,000, if at 30 days have passed since the due date of each claim and the debtor has not made a written counterclaim against creditors;
- other creditors may file a claim on the insolvency of the debtor on any grounds. In this case the ruling on opening the procedures on insolvency is delivered by the court after the position of a debtor is posed.

2.6 Requirement for Insolvency

The reason for opening insolvency proceedings is the insolvency or expected insolvency of the debtor. The law has broadly defined "insolvent" as a situation when the debtor is unable to satisfy a creditor's due claim.

2.7 Specific Statutory Restructuring and Insolvency Regimes

The insolvency regimes of banks, non-banking deposit institutions, brokerage companies, payment service providers and insurance companies are regulated by NBG regulations. There are special rules applicable to energy, railway, water and health sector insolvency.

3. Out-of-court Restructurings and Consensual Workouts

3.1 Restructuring Market Participants

This is not applicable in Georgian jurisdiction.

3.2 Consensual Restructuring and Workout Processes

This is not applicable in Georgian jurisdiction.

3.3 New Money

This is not applicable in Georgian jurisdiction.

3.4 Duties on Creditors

This is not applicable in Georgian jurisdiction.

3.5 Out-of-court Financial Restructuring or Workout

This is not applicable in Georgian jurisdiction.

4. Secured Creditor Rights and Remedies

4.1 Liens/Security

Under Georgian Law, security over real estate is registered on the basis of a mortgage agreement, which is registered at the Public Registry. As regards movable property, as well as shares, security can be granted based on a pledge agreement. Each agreement that is not possessory pledge needs to be registered in the Public Registry with the exception of financial collateral. However, transporting vehicles, ships and aircrafts are subject to special registry procedures.

4.2 Rights and Remedies

The conditions under which a secured creditor can enforce their security are determined by Civil Code of Georgia and mortgage agreements. In particular, a secured creditor is entitled to use security measures if the debtor fails to fulfil its obligations under the mortgage agreement. In practice, when a secured claim becomes due and is not paid, this is the ground of a default. Enforcement of a secured claim is made in the form of a realisation of the property by the National Enforcement Bureau. In insolvency proceedings, the creditor is not entitled to enforce the mortgage, as well as pledge by way of realisation. Rather, the realisation of security is made on the auction by the National Enforcement Bureau.

4.3 Typical Timelines

In the process of bankruptcy, the secured property is realised along with all other property of the debtor. All actives are sold in the first auction as a combined lot. Every following auction, each item is subject to a creditor's review and approval.

The procedure of the auction is determined by the Decree of the Minister of Justice, and the date of the first auction should be set no later than 40 days from the appointment of a bankruptcy manager.

There is no special provision related to secured property realisation. It follows the basic rules of the law.

4.4 Foreign Secured Creditors

An additional, reasonable time limit may be set for a foreign creditor to file a claim. The claims of a foreign creditor are treated in the same manner as all other claims.

4.5 Special Procedural Protections and Rights

Secured creditors, under Georgian insolvency law, are not entitled to any special procedural protections and rights. However, they benefit from a better rank and specific rights attached to their security's interest, in particular, the approval of the rehabilitation plan.

5. Unsecured Creditor Rights, Remedies and Priorities

5.1 Differing Rights and Priorities

A well-defined hierarchy of creditors exists when a company enters insolvency, with the secured creditors ranking the highest. In addition to the distinction between secured and unsecured creditors, the law of Georgia also notes the relevance of the category "new creditors" that are identified after the court ruling upon receiving the insolvency application is rendered. Although basic rights, including voting or involvement in proceedings, do not differentiate the secured and unsecured creditors, the unsecured creditors are entitled to lower protection in terms of compensation due to the fact that they do not have lien on debtor's property. Therefore, it is often the case that this group is not rewarded proportionately to their claims from the distribution of assets. Unsecured tax claims are ranked higher than any other unsecured claims. Notwithstanding whether a claim is secured or not, the creditors are not classified in the creditor's meeting and decisions are made by simple majority.

Here it should be noted that, in contrast with the other category of creditors, only secured creditors are conferred with the special authority to make decisions unanimously on arising new debts after creditors' claims have been checked on creditor's meeting. They are also entitled to suspend the enforcement of the following creditors' decisions: substantive conditions of the agreement concluded with the bankruptcy or rehabilitation managers; and rehabilitation term-related issues.

The secured creditors are mostly prioritised during the rehabilitation process. For instance, only in the case of approval by the secured creditors and rehabilitation manager along with the company director's decision, the new contributions to increase capital are allowed. Additionally, feasibility of the rehabilitation plan, as well as the amendments to the plan, are dependent on the endorsement of every secured creditor.

5.2 Unsecured Trade Creditors

Despite the fact secured creditors are conferred with the special rights during the restructuring proceedings and have much say on rehabilitation plan enforcement, the unsecured creditors are, generally, fully participating in the process. Their involvement is merely facultative, however, and in the absence of secured creditors, the unsecured creditors take the lead in the creditor's meeting. Consequently, they become responsible for the key decisions conveyed by the meeting.

5.3 Rights and Remedies for Unsecured Creditors

The basic rights, ranging from filing a private claim or insolvency application to the court, to presenting their grounded claims on debtor, to the recusal of the trustee with reasonable and motivated motion, are conferred to creditors irrespec-

tive of whether they are secured or unsecured. Moreover, they are entitled to receive all information the debtor unveils to the trustee during the proceedings.

Much importance is placed on the creditor's meeting as it is authorised to make following decisions:

- appointment of the member of the conciliation council;
- appointment or recusal of the bankruptcy/rehabilitation manager;
- establishment of the committee of creditors, determination of its membership, and scope of authority; and
- rule of operation and other issues.

All secured and unsecured creditors have the right to attend the creditors' meeting and afterwards comment on trustee's brief summary of the matter. The first creditor's meeting is responsible for check-up of the creditor's claims, determines debt's volume and creditor's ranking that later on is registered in a creditor registry. They should get fair and equitable treatment.

In the bankruptcy chapter, the creditor's ranking (one to four) provides unsecured creditors are categorised according to their claims. The fifth place is given to the unsecured tax claims, while the other unsecured claims are given the sixth place. This implies that each claim is satisfied after the claims of previous rank are fully upheld. However, it should be noted that there will be no prioritisation of unsecured claims according to the new proposal of the law.

5.4 Pre-judgment Attachments

The Georgian legal system does not recognise pre-judgement attachments.

5.5 Timeline for Enforcing an Unsecured Claim

There is no specific time defined for the enforcement of unsecured claims. However, the law stipulates general timelines and differentiates between the timeline applicable to bankruptcy and that applicable to restructuring. If the bankruptcy is requested by the debtor, it should not exceed 207 days. In the case of a creditor's and other party's request, the maximum length of proceedings is 225 days. As far as the rehabilitation plan in concerned, the length of preparation is determined as 60 days. The law does not explicitly refer to the length of a rehabilitation procedure. In practice, it may last up to, or longer than, eight years.

5.6 Bespoke Rights and Remedies for Landlords

Georgian law on insolvency proceedings does not contain any special protections, bespoke rights or remedies for landlords.

5.7 Foreign Creditors

Foreign creditors are normally treated as general creditors. However, the law provides them additional reasonable time to present their claims without any modification in the rules applicable to the determination and endorsement of the claims.

5.8 Statutory Waterfall of Claims

The following details the priority of claims in Georgian insolvency law:

- procedural costs and fees for the supervisory service (National Bureau of Enforcement service);
- indebtedness of the debtor arisen after the court renders ruling on opening insolvency proceedings (new creditors);
- all costs and reimbursements related to the appointment of the trustee and carrying out their obligation;
- all secured claims;
- unsecured tax claims;
- all other acknowledged unsecured claims; and
- claims presented after the deadline for filling the claims.

Here it should be mentioned that this waterfall of claims does not apply to those creditors whose claims are secured with a financial mortgage.

5.9 Priority Claims in Restructuring and Insolvency Proceedings

The claims arising after the opening of the insolvency proceedings are prioritised over all other creditor's satisfaction. The ongoing obligations (salary, business trip expenses, subsistence, compensations and other related indebtedness) should first be accomplished. The law also implies that any rehabilitation plan may consider full advance satisfaction of the claims arising from a labour relationship (salary, business trip expenses, subsistence, compensations and other related indebtedness). This paragraph of the law further suggests that, in the case of taking a decision on satisfying claims of social indebtedness fully in advance, claims on subsequent tax indebtedness related to the claims of social indebtedness should be simultaneously satisfied. The law mentions that secured claims should be satisfied within the shortest possible timeline.

Only procedural costs and fees for the supervisory service (National Bureau of Enforcement service) are ranked higher than the secured creditors.

6. Statutory Restructurings, Rehabilitations and Reorganisations

6.1 Statutory Process for a Financial Restructuring/ Reorganisation

In order the provisions of the rehabilitation to be applicable, the law recognises two options for commencement. The debtor directly triggers the rehabilitation procedure either with its application for opening the insolvency proceedings,

or on the ground of the Conciliation Council's decision, that substantially examines the issue of debtor's insolvency. In the instance of the former, the debtor develops the rehabilitation plan that needs to be attached to the application in advance. The latter is regarded only as a project and should be assessed according to the general provisions by the court in line with opinion paper of the trustee/receiver and Conciliation Council. The basis for the commencement stipulated in the law is the insolvency, defined as inability of the debtor to satisfy the creditor's claims, or expected insolvency of the debtor, who will or may become insolvent in the nearest future if appropriate measures are not taken.

According to the law, triggering the restructuring proceedings does not need any approval of the secured or unsecured creditors. However, the creditors, generally, are responsible for appointment of the rehabilitation manager and determining the timeline for developing the draft rehabilitation plan within three days following the publishing of the court ruling on rehabilitation. The creditors' decisions are also approved by the court ruling.

The rehabilitation plan provisions represent the cornerstone of the whole proceeding. Already having discussed some of the major issues, it should be mentioned that the rehabilitation plan cannot change the creditor's ranking or any applicable dates and terms for satisfaction. However, the plan may place social indebtedness a rank above the sixth and seventh creditor ranks (see **5.9 Priority Claims in Restructuring and Insolvency Proceedings**).

The law also defines the persons responsible for the preparation of the rehabilitation plan. This obligation is transmitted to a debtor, a creditor or a rehabilitation manager, or to several of them simultaneously. The main requirement is that they should conduct consultations with the secured creditors, other creditors and the persons responsible for handling and representing the debtor. The Conciliation Council is obliged to inspect the draft rehabilitation plan and deliver its updates or approval within ten days of it being published in the electronic system. The authorised rehabilitation plan then undergoes scrutiny by the creditor's meeting within seven days and is only implemented upon the receival of the secured creditor's approval.

It should be noted that only in this one instance does the law differentiate between secured and unsecured creditors in the process of rehabilitation by granting the right of final authorisation of the rehabilitation plan to the secured creditors. However, the law also recognises the court's right to start rehabilitation procedure according to the rehabilitation plan submitted by the debtor. This can be realised even without the authorisation of secured creditors and a Conciliation Council if the following criteria are met. The rehabilitation has to be triggered by the debtor itself and the aim and purpose of the law, that ranges from equal protection of the debtor's and creditor's rights, to resolving future financial problems and satisfying creditors' claims, is better met in a shorter timeframe. The court may issue the ruling after examining this matter on the creditor's meeting.

Georgia's law on Insolvency Proceedings recognises, predominantly, the court-driven restructuring process. Nevertheless, in some instances, the division of supervisory power between the court and the creditor's meeting is foreseen, the latter being directly or indirectly dependent on the court. Therefore, all important decisions issued by the participants of the rehabilitation process need to be authorised by a court ruling and published accordingly in the electronic system. The court's supervision, among others, includes assessing an application, as well as debtor's rehabilitation plan in given circumstances, the appointment of the trustee/supervisor, the determination of the creditor's meeting date and issues to be discussed, and the examination of the ranking of the creditors. Moreover, in absence of the trustee/receiver's consent, the debtor is not allowed to enter any deals or terminate any existing deal without court's approval. The court is also responsible for authorising any amendments to the rehabilitation plan submitted by the creditor's meeting and issuing the termination of rehabilitation proceedings if requested by the creditors.

The timeline applicable to the restructuring proceedings is scattered across the law. Typically, the court decides the issue of opening the insolvency proceedings within five days from the date of the application. Where the application meets all standards established by the law, the court renders the ruling leading to the opening of the insolvency case. This ruling should include the date for the first creditor's meeting, set no earlier than 30 days, and no later than 40 days, from the ruling and to last no more than seven days, unless otherwise prolonged by no more than three days.

Here it should be noted that the Conciliation Council is established in the first creditor's meeting. Therefore, there is no extra deadline for the appointment of its members. Nevertheless, the Conciliation council is granted 15 days from its establishment to make decisions on the following:

- bankruptcy;
- rehabilitation; and
- termination of the insolvency proceedings.

Where the rehabilitation is approved, the creditors are entitled to define the timeline for developing a rehabilitation plan that should not exceed 60 days, however, this time can be prolonged by the decision of creditors holding at least 51% of votes. The rehabilitation process is concluded as soon as the plan is implemented in its entirety. However, the law also introduces the possibility of the termination of the rehabilitation proceedings. Creditors holding at least 10% of the whole votes may file a claim to the court stating the failure

of the implementation process. The court then has 14 days to convey the decision either on termination of the rehabilitation plan or rejection of the claim. According to this provision, the termination of the rehabilitation plan leads to the bankruptcy of the debtor, nevertheless, all the activities and deals concluded before termination remain in force. In the case of the full realisation of the rehabilitation of the plan, the insolvency proceedings are finished, and the enterprise may continue its fully-fledged existence.

Another important aspect stipulated by the law is the recognition of the claims. The first creditor's meeting assesses the volume of the claims as well as the rules on their satisfaction. The timeline for the creditors to submit their claims is 20 days after the court's ruling on opening of the proceedings is being published. The judge considering the trustee's and the parties' remarks according to the factual circumstances, delivers a ruling on the recognition or refusal of each individual claim. After the publication of the ruling in the electronic system, the creditor to whom the ruling is directed, or any other creditor, can submit it to the appeal procedure. It is worth noting that a creditor with both secured and unsecured claims is counted as two independent creditors. In the aftermath of assessing the claims, the judge submits the creditors registry for publication in the electronic system. The law acknowledges the situation that not all claims may be submitted within the time limit and, therefore, it construes special provisions for delayed claims.

Statutory restructuring proceedings are binding for every participant. The decisions rendered by the court and creditor's meeting equally bind the voting or non-voting creditors. An exception is not provided to the unknown creditors. The law clearly stipulates that every ruling the court renders during insolvency proceedings can be appealed through a private claim in five days from when the ruling is rendered. In order for this right to be activated, the party to whom the ruling is rendered, or the party that is directly affected by this ruling, should prove substantial or procedural mismatches with the law. Nevertheless, filing a private claim does not suspend accomplishment of the procedural act stipulated by the court ruling that was appealed.

The law does not contain any provision on confidentiality policy. Further, most of the decisions are required to be published in the public electronic system and the materials of the proceedings are fully disclosed to the parties involved in the insolvency proceedings.

6.2 Position of the Company

The court's ruling on the opening of the insolvency proceedings is the general legal basis on which to trigger an automatic moratorium or a stay on claims. Within its framework, the debtor is not allowed to enter into any deals, or terminate any existing deals, without the trustee's or, in the case of the trustee's absence, the court's consent. A moratorium also includes the suspension of the compulsory enforcement of the claims against the debtor and no new measures of compulsion, no penalties are allowed. The securing of debts incurred before the court ruling on insolvency proceedings is also restricted and imposition/payment of interests, forfeitures, penalties (including tax-related) is put on standstill.

However, for the purposes of uninterrupted operation, the company is entitled to assume new contractual obligations upon the trustee's consent or, in case of its absence, the court's consent. The law provides that from the moment the court rules an opening of the insolvency proceedings person authorised to manage and represent the debtor will protect the interests of the debtor. Although the director may still be responsible for the management of the company, the creditor's meeting is granted supervisory powers. Moreover, in this process the trustees play a major role. They have rights to assume control over management and representation of the company during the term of its authority, which is terminated immediately after court's consent on the decision of the creditor's meeting on the appointment of the rehabilitation manager is obtained. The same authorisation is needed for borrowing money during the rehabilitation process and, therefore, in every case the consent of the rehabilitation manager is compulsory.

The law does not distinguish between the rights and obligations of the rehabilitation manager, rather, it is subject to the contractual relationships between director and rehabilitation manager. Within this contract, the remuneration of the manager is also decided.

6.3 Roles of Creditors

The law does not recognise different classes of creditors. They have the same voting, attendance and satisfaction rights, in compliance with the statutory ranking, unless special provisions are applicable to the secured creditors.

As already indicated, the most important is the creditor's meeting. The law recognises the committee of creditors established by the creditor's meeting. It is determined as a facultative body, entitled to select and dismiss objectives as well as the decision-making rules, number of members and the scope of authority, all of which are defined by the creditor's meeting via a simple majority of vote.

Although the law does not provide the rights and obligations of the committee of creditors, their decision is equal to the creditor's meeting decision. The creditors are entitled to obtain all the information that is revealed during the restructuring process. This includes the information about property, liabilities, financial status and operation of the debtor and any pending court disputes at the moment of opening the insolvency proceedings. Practice shows that the rehabilitation manager mainly reports the relevant requested information to the creditors.

6.4 Claims of Dissenting Creditors

The dissenting creditor's protection is not generally recognised by Georgian insolvency law, nevertheless, it is a requirement that there will be no provisions or conditions included in agreements or contracts which are clearly and manifestly unfavourable or unreasonable for creditors on the whole, or certain groups of creditors. Every decision taken by the creditor's meeting is binding regardless they are secured or not. This does not however mean that the volume or ranking of the creditors are at stake.

The cramdown mechanism is initially applied with the approval procedure of the rehabilitation plan. If any of the secured creditors oppose the rehabilitation plan, other secured creditors may propose either the apportioning of the secured items from the trusted property, their sale and satisfaction from the proceeds, or the redemption of the debt according to the data in the creditors' claims registry. However, if this right is exercised, dissenting secured creditors are obliged to accept the proposal. The law also provides for circumstances where all secured creditors unanimously oppose the rehabilitation plan. In this case, other creditors are entitled to propose the above-mentioned measures and the proposal becomes binding.

Further, the cramdown procedure can be used in relation to the full or partial release of the debtor from a debt or transforming the debts on the ground of the rehabilitation plan. This procedure needs to be approved by all creditor's regardless of being secured or not. If any of the creditors opposes the decision of freeing a debtor, other creditors may propose to the dissenting creditor the redemption of the debt in accordance with the data registered in the creditors' claims registry and they are obliged to accept the proposal.

6.5 Trading of Claims Against a Company

The Law of Georgia on Insolvency Proceedings does not explicitly mention any provision related to the trading of claims against a company. However, general rules are applicable to the concession of claims. The creditor can freely assign its claims to a third party after the opening judgment of the insolvency proceeding. The only requirement is to give notice of this assignment to the judiciary, trustee or the rehabilitation manager in order to ensure that the assignee is correspondingly invited by the judge to take part in the proceedings.

6.6 Use of a Restructuring Procedure to Reorganise a Corporate Group

Under Georgian law, there is no special emphasis on the reorganisation of a corporate group.

6.7 Restrictions on a Company's Use of or Sale of Its Assets

The asset realisation in the process of realisation should be determined by the rehabilitation plan. However, if the plan is written in general terms and the realisation of assets serves for the implementation of the plan, the decision on realisation is taken by the rehabilitation manager. It may need the approval of the creditors.

The company continues its normal routine regardless whether it is undergoing realisation or insolvency. Generally, there is no restriction on a company continuing to provide services or goods. The latter should be agreed upon with the trustee before the appointment of the rehabilitation manager. In case an agreement is not reached, the court is eligible to provide authorisation.

6.8 Asset Disposition and Related Procedures

The law does not explicitly mention any provisions that are related to asset disposition in the rehabilitation process. This means that no statutory requirements are foreseen other than the approval procedure noted in the **6.7 Restrictions on a Company's Use of or Sale of its Assets**. Therefore, the rehabilitation plan may contain rules on disposition of assets that are either sold on a piecemeal basis or as a going concern. In this proceeding, a purchaser acquires a title in a sale, free and clear of claims.

As the law does not contain any specific rule related to asset disposition during the rehabilitation process, the creditors do not have any restrictions on being a bidder or a stalking horse.

6.9 Secured Creditor Liens and Security Arrangements

Securities over the company's assets may be released as part of commitments contained in the rehabilitation plan.

6.10 Priority New Money

The law allows for new financing instruments to increase the capital. The decision of the shareholder(s) regarding new investment should be approved by the rehabilitation manager and all secured creditors via the electronic system. New financing cannot be returned to the shareholder if the rehabilitation plan is not successfully completed.

A company is not subject to restrictions related to the securing of its own assets, even those ones already pledged. The taking of loans, and the securing of them, needs to be authorised by the rehabilitation manager and other secured creditors.

In the process of satisfaction, submitted new money is held prior to any other claims and is even placed ahead secured creditors in the ranking.

6.11 Determining the Value of Claims and Creditors

The determination of the value of claims occurs during the statutory process. After the creditor's claims submission

deadline, the first creditor's meeting is obliged to analyse each and every claim according to the trustee's and parties' reports, as well as factual circumstances. Consequently, the court displays the creditor's claim registry containing all the information pertaining to volume, value and the ranking of creditors.

6.12 Restructuring or Reorganisation Agreement

When the rehabilitation plan is formally approved by secured creditors and the court, the judge carries out a control regarding fairness of the agreement. Therefore, a fair and equitable treatment to all creditors, regardless if secured or not, is guaranteed. Moreover, by virtue of the law, creditors are protected from any potential harmful activity of the debtor.

There are no provisions related to special requirements on annulment of the contracts.

6.13 Non-debtor Parties

Under general terms, non-debtor parties must fulfil their duties despite the failure of the debtor to respect its commitments prior to the opening judgment. Any failure by the debtor to implement these previous commitments entitles creditors to appeal their claim against the debtors.

6.14 Rights of Set-off

Generally, the opening ruling of a restructuring proceeding prohibits the payment of any creditor's claim. If the creditor and debtor have a reciprocal receivables agreement in place prior to the court's opening ruling, the set-off may occur, however, the law does not provide any provision on mutual debts arising after that particular moment.

6.15 Failure to Observe the Terms of Agreements

The law does not explicitly construe any liabilities if the terms of the agreement are not respected. However, it voices against falsified information on the debtor's property or occupation contained within the rehabilitation plan. If, by virtue of deliberate or gross negligence, the rehabilitation plan shows inaccurate or false information on, or if information vital for the case is hidden, the court takes the decision to dismiss the rehabilitation manager if they are in charge, refer the case to bankruptcy if the debtor shares the responsibility, or remove voting rights if the creditor is accountable.

The law further defines that the rehabilitation plan shall be terminated if it is not complied with. Creditor's owning at least 10% of the creditors' general votes are entitled to address the court by indicating the paragraphs of the plan that are not being respected.

In general, disrespecting the rehabilitation plan may lead to the bankruptcy of the debtor.

6.16 Existing Equity Owners

The law does not refer to the issue of receiving dividends. The shareholders generally retain their shares in a company. In the case of the company's bankruptcy, if the assets remain after distribution they can be entitled to distribution among existing equity owners.

7. Statutory Insolvency and Liquidation Proceedings

7.1 Types of Voluntary/Involuntary Proceedings

According to Georgian law, several types of unpaid creditors may initiate general insolvency proceedings if a debtor is shown to be insolvent under Georgian insolvency test. After starting a general insolvency procedure, the conciliation council makes a decision on the rehabilitation of the debtor enterprise or its bankruptcy. As regards voluntary proceedings, an insolvent debtor must file an application to start insolvency proceedings within three weeks from the date on which it became insolvent. The debtor can initiate:

- immediate liquidation/bankruptcy proceeding;
- rehabilitation; or
- general insolvency proceeding, where the conciliation council decides whether rehabilitation or liquidation is most suitable for the company.

Since all mentioned procedures are court-controlled, each may be commenced by filing application to the court.

In the case of a debtor initiating insolvency proceedings, creditors may file claims within 20 days from the publication of the opening ruling. Each claim presented to the court must examined at the first meeting of creditors in order to determine the amount and justify evidences.

Any creditor is entitled to transfer its claim, any time, to third parties. In this case, the new creditor shall submit evidence of the transferring of the claim to the court in order to make amendments to the list of creditors. Creditors receive regular information on the status and developments of the bankruptcy proceedings through a periodical report of the receiver (eg, in relation to the process of verification of claims, as well as to the execution of the liquidation plan and any actions carried out by the receiver in the interest of creditors).

From the date of making a decision on opening insolvency proceedings, compulsory enforcement against the debtor is suspended and no new measures of enforcement are allowed. Securing the debts incurred before the court decision is restricted and repayment of debts, imposition/payment of penalties and interests (including tax liabilities) is stopped.

The Insolvency Law contains various responsible functions for the carrying out of an orderly insolvency procedure, namely the trustee, the bankruptcy manager and the rehabilitation manager. The trustee is always the National Enforcement Bureau (NEB). The bankruptcy and rehabilitation managers are appointed by the creditors. If creditors do not appoint, or fail to nominate, a bankruptcy manager, the NEB is appointed by court decision. The law does not distinguish the rights and obligations of the rehabilitation manager; these are subject to the contractual relationships between director and rehabilitation manager. The contract defines what powers (management or supervision) are given to rehabilitation manager. In case of bankruptcy, the law gives full authority to the bankruptcy manager, and the director remains subject to tax accountability.

The creditors' claims are ascertained by the court and included in a schedule of claims by order of priority ranking. The creditors under in the same ranking, will be satisfied based on "pari passu" principle.

7.2 Distressed Disposals

In insolvency proceedings, the court appoints a trustee who assume control of the company's activity. The director of the debtor company can no longer engage in any legal acts from the time of the opening of insolvency proceedings. The main focus of the trustee, in the process of bankruptcy, is the realisation of assets and the distribution of the proceeds among creditors according to the quota. When realising assets by way of sale of the debtor's company, the trustee must first establish whether the continuance is impossible, in which case the creditors' have to agree. Since the auction is carried out via electronic means, any person, including secured and unsecured creditors, may bid for company assets.

7.3 Failure to Observe Terms of Agreed/Statutory Plan

The accepted and court-approved rehabilitation plan is binding on all creditors and the debtor. The rehabilitation manager is responsible for the implementation of the approved rehabilitation plan.

7.4 Priority New Money During the Statutory Process

See **5.9 Statutory Waterfall of Claims** and **6.10 Priority New Money**.

7.5 Insolvency Proceedings to Liquidate a Corporate Group

The law of Georgia does not provide for the liquidation of a corporate group.

7.6 Organisation of Creditors or Committees

Committee of creditors is facultative body. The establishment of the committee, selection and dismissal of its members, number of members and scope of authority is determined by the meeting of creditors via simple majority of votes.

7.7 Use or Sale of Company Assets During Insolvency Proceedings

If the company is in the process of bankruptcy, the sale of assets is carried out by National Enforcement Bureau through the following procedures.

First auction is held in order to sell the trusted property as one batch. Disaggregated sale of trusted property on the first auction is prohibited. The initial selling price of the trusted property is set at 50% of the market value, which in its turn is determined by an expert. On the second auction, the trusted property may be sold as a whole batch or in parts. Decisions about the form of a disaggregated sale of trusted property on the second auction can be made by the majority of votes at a meeting of creditors, within seven days from the completion of the first auction. In such a case, the creditors decide the initial price of each lot. If creditors fail to make the above decisions, in the second auction the trusted property shall be sold as a whole batch. In such case, initial price of the trusted property will be 25% of the initial price set in the first auction. If trusted property is not sold in the second auction, a third auction will be held. The National Bureau of Enforcement shall decide to sell the property as a whole batch or in parts and the price of the property shall be GEL0.

8. International/Cross-border Issues and Processes

8.1 Recognition or Relief in Connection with Overseas Proceedings

Only two articles are outlined in the law regarding insolvency case proceedings abroad. It makes clear that recognition and enforcement of the foreign judgement shall occur where the insolvency proceedings are related to property or creditors existing in Georgia. However, there is a limitation on recognition if the court that decided upon the case did not have jurisdiction according to Georgian legislation, or the insolvency case contradicts substantial principles of Georgian legislation, namely the basic rights of individuals.

8.2 Co-ordination in Cross-border Cases

It is the matter of the Law of Georgia on Private International Law to give the courts the right to enter into protocols or other arrangements. The legislation on insolvency proceedings does not contain any specific provision.

8.3 Rules, Standards and Guidelines

The main legal basis is the Law of Georgia on Private International Law, in accordance with the international treaties.

8.4 Foreign Creditors

Foreign creditors are entitled to same rights and obligations that all other creditors. Given the fact that information on opening an insolvency proceeding may not promptly be available for the foreign creditors, they are given additional, reasonable time to submit their claims. Foreign creditors' claims are examined by the same rules as other claims.

9. Trustees/Receivers/Statutory Officers

9.1 Types of Statutory Officers

The Insolvency Law knows various responsible functions for the carrying out of an orderly insolvency procedure. These are the trustee, the bankruptcy manager and the rehabilitation manager. The trustee always is the National Enforcement Bureau. The bankruptcy and rehabilitation managers shall be appointed by the creditors. If creditors do not appoint, or fail to nominate, a bankruptcy manager, the NEB is appointed by court decision. The appointment of the rehabilitation manager needs court approval.

9.2 Statutory Roles, Rights and Responsibilities of Officers

In insolvency proceedings, the specific duties of the trustee provided in the law are as follows:

- to take control over the management and representation of the debtor;
- to review the claims of creditors/debtors;
- to prepare report on insolvency of the debtor and submit it to the court/conciliation council; and
- to keep the trusted property and conclude agreements with third parties, etc.

This is not clearly stated in the law provisions on the bankruptcy manager and the rehabilitation manager. The bankruptcy manager is appointed by the meeting of creditors with a majority vote. If the creditors fail to appoint a bankruptcy manager, then the court appoints the National Enforcement Bureau as the Bankruptcy manager.

In rehabilitation procedures, the duty of the director is partially delegated to the manager. The rehabilitation manager should be an independent party. A person who conducts the same or similar activity as a debtor cannot be appointed as a rehabilitation manager. Since the law does not provide the duties and obligations of rehabilitation manager, in practice, the agreement on defining the powers should be concluded between the rehabilitation manager and director.

9.3 Selection of Officers

This is not applicable in Georgian jurisdiction.

10. Advisers and Their Roles

10.1 Typical Advisers Employed

When a company is in financial distress or considering filing for bankruptcy or rehabilitation, it will typically involve qualified legal counsel to advise on how best to proceed and avoid liabilities and, if need be, to draft and file the petition for suspension of payments or bankruptcy. Therefore, attorneys in the co-operation, with the accountants, financial advisors, investment bankers, management consultants, board of directors and shareholders, try to recover the situation. This shows that the company striving for its life engages as many minds as they can.

10.2 Compensation of Advisers

The contractual arrangements define the reimbursement of such professionals. These terms also establish who is party to these employment agreements. In case of the legal counsels entrusted by the creditors, the creditors can pass the costs on to the debtor company. The claims of the debtor company's accountants may be considered liquidation costs. The qualified valuers also play an important role in these proceedings and their repayment should be estimated by the market value.

10.3 Authorisation and Judicial Approval

It is the matter of the private contractual arrangements to decide whom to engage in the process. Therefore, no authorisation or judicial approval is required for the employments. However, the court may appoint experts in specific fields, if needed.

10.4 Duties and Responsibilities

Every professional involved in the restructuring proceeding should aim to achieve the best outcome for the company. Thus, financial counsels are there to advise on numbers, negotiation and in leading operations; turnover specialists are engaged for operational and financial assistance; and investment bankers support with their knowledge in debt negotiation and debt raising. Although they all play vital roles, the attorneys are assigned to guide them through the legal world, determine the applicability of measures, file the claims and represent their interest in the courtroom.

11. Mediations/Arbitrations

11.1 Utilisation of Mediation/Arbitration

Under current legal framework on insolvency, there are no ADR opportunities foreseen for the restructuring proceedings. The courts are fully responsible for the process launch and development. As far as the general picture is concerned, Georgia is quite actively involved in fostering mediation and arbitration as dispute resolution tools.

11.2 Mandatory Arbitration or Mediation
Mandatory arbitration or mediation in insolvency proceedings are not recognised in Georgia.

11.3 Pre-insolvency Agreements to Arbitrate
The legal framework does not explicitly limit the use of the pre-insolvency agreements. In fact, if the latter is not fully incompatible, it may be given a place in the statutory proceeding as well.

11.4 Statutes Governing Arbitration/Mediation
Georgia has a solid legal framework for ADR opportunities. The country has recently adopted the Law of Georgia on Commercial Arbitration, which fully promulgates a quick and effective dispute settlement mechanism based on mutual understanding. For arbitration concerns, in 2015 the Law of Georgia on Arbitration was revised and is in full compliance with the UNCITRAL Model law.

11.5 Appointment of Arbitrators
The Georgian arbitration act provides rules for the appointment of the arbitrators. It defines that the arbitrator's consent is obligatory in order for the person to be appointed in this position. The procedure for appointment is determined by the parties' agreement. However, in the absence of such an agreement, or in case the procedure is impossible to perform, the following rules apply:

- Arbitral tribunal consisting of three arbitrators: each party shall appoint one arbitrator, and the two arbitrators appointed in accordance with this rule shall appoint the presiding arbitrator; if a party does not appoint an arbitrator within thirty days after receipt of a request to do so from the other party, or if the two arbitrators, within thirty days after their appointment, cannot agree on the appointment of the third arbitrator, within thirty days of the receipt of such a request, an arbitrator shall be appointed by a court; and
- Arbitration that is to be conducted by a sole arbitrator: if the parties cannot agree on the appointment of the arbitrator, based on the request of a party, within thirty days after submitting an application, the arbitrator shall be appointed by a court.

A person shall not be denied appointment as an arbitrator unless they:

- have limited legal capacity or is a beneficiary of support, unless otherwise established by court judgement;
- are a state employee, a state political official, a political official or a public servant; or
- have been convicted of committing a crime and the conviction has not been vacated or dismissed.

Each arbitrator is obliged to present written information on his/her education background as well as working experience as an arbitrator if applicable.

Regarding the appointment of the mediator, the law delegates the choice of a mediator to the parties of the dispute. Nevertheless, in the case of court mediation, the mediator is appointed from the mediator's registry, according to the parties' will, in three days. If the parties' fail to appoint a mediator within the deadline, a mediator is assigned by the Executive Council of the Georgian Mediation Association. As far as private mediation is concerned, the parties may appoint a mediator from the registry, who is obliged to conduct the mediation process in compliance with the above-mentioned law. However, this rule may not come into existence if the parties agree on different appointing procedures.

The law also defines the qualification criteria required for the mediator to be appointed. Among them are the relevant experience in negotiations or court proceedings or other dispute resolution mechanism, some legal background (unless the context of the dispute requires otherwise), accreditation from a relevant institution, soft skills and a good reputation. This list can be enlarged by the parties according to their needs and requirements.

12. Duties and Personal Liability of Directors and Officers of Financially Troubled Companies

12.1 Duties of Directors
The restructuring process may affect the directors' general duties and responsibilities/liabilities. If the company is in insolvency, the director loses the part of its power, which is transferred to trustee, bankruptcy manager or rehabilitation manager.

In Georgia, directors have two principal duties: a duty of care and a duty of loyalty. The director is also obliged to conduct the company's business in good faith and, in particular, a director must take care of company matters as an ordinary person of sound mind in a similar capacity and under similar circumstances would, acting in the faith that their action is in the best interests of the company.

Recently, the Supreme Court of Georgia reiterated that the "business judgement rule" applies in Georgian law. The Court noted that the duty of care requires the director to make certain decisions that aim to increase the profits of the company. However, the court noted that "such decisions may be risky as well as wrong in certain cases. However, under business judgement rule, if the company director acts in good faith and aims to safeguard the best interests of the company, while the director is informed in advance in a

manner that is acceptable, then the director is shielded from the personal liability".

12.2 Direct Fiduciary Breach Claims
According to Georgian law, if the director concluded an agreement one year prior to insolvency proceedings, these agreements shall be deemed a harmful action. In this case, any creditor, bankruptcy manager or rehabilitation manager shall submit the claim to the court and request compensation for damages.

12.3 Chief Restructuring Officers
This is not applicable in Georgian jurisdiction.

12.4 Shadow Directorship
This is not applicable in Georgian jurisdiction.

12.5 Owner/Shareholder Liability
The law does not specify any such liability of owners/shareholders.

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13. Transfers/Transactions That May Be Set Aside

13.1 Historical Transactions
This is not applicable in Georgian jurisdiction.

13.2 Look-Back Period
This is not applicable in Georgian jurisdiction.

13.3 Claims to Set Aside or Annul Transactions
This is not applicable in Georgian jurisdiction.

14. Importance of Valuations in the Restructuring and Insolvency Process

14.1 Role of Valuations
This is not applicable in Georgian jurisdiction.

14.2 Initiating a Valuation
This is not applicable in Georgian jurisdiction.

14.3 Jurisprudence
This is not applicable in Georgian jurisdiction.