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# 2 years on from insolvency REFORM

## LESSONS LEARNED

For years, insolvency legislation in Georgia was considered outdated and ineffective. The 2007 Law of Georgia on Insolvency Procedures, for instance, was widely criticized for its lack of clear guidance on important procedural and legal issues, as well as its rigidness and lack of flexibility. As a result, insolvency proceedings were slow, costly, and uncertain, leading to an extremely low level of utilization of the framework by debtors and creditors.

In the dynamic realm of finance and business, insolvency legislation plays a pivotal role in maintaining stability, protecting stakeholders, and facilitating economic recovery. Recognizing the potential benefits of creating an effective insolvency system, the Georgian parliament adopted the Law on Rehabilitation and Collective Satisfaction of Creditors in 2020. The new law, which came into force in April 2021, is a significant step forward in reforming the insolvency system in Georgia and introducing important changes to address shortcomings in the previous legislation.

Since the enactment of the new law, 91 applications have been filed, resulting in 34 insolvency cases being opened. Eighteen of these cases were bankruptcy regimes, and 16 were opened with a rehabilitation motion. Conversely, 57 applications have been rejected by the court based on inadmissibility and 17 applications were found inadmissible due to a lack of insolvency estate, resulting in automatic liquidation and deregistration of the debtor entity. In several other cases, the court refused to open the regime on merit, and three rehabilitation cases were converted into bankruptcy due to the inability of debtors and creditors to agree on a rehabilitation plan.

While the number of pending cases still lags behind expectations, the aftermath of Covid-19 and a backlog of cases from the old law suggest that the need for resorting the insolvency framework is higher than the existing numbers demonstrate. It is expected that the number of applications will gradually increase as businesses become more familiar with the benefits of the new insolvency system.

### POSITIVE PROGRESS

Since the law's adoption, several promising developments indicate that the new insolvency legislation is a marked improvement compared to the previous framework. These include:

**The establishment of a new profession: insolvency practitioners.** The new law has introduced an independent and regulated profession for insolvency practitioners. Since the law came into effect, 18 professionals have successfully undergone a competitive selection process, passed authorization exams, and become authorized to handle insolvency cases as insolvency administrators. The professionalization of insolvency administration is widely regarded as the cornerstone of modern insolvency practice. Insolvency practitioners possessing the necessary expertise and armed with relevant legal instruments will be pivotal in improving the overall insolvency practice, particularly in the medium to long-term as the caseload increases.

**A decrease in the courts' workload.** One of the key areas of improvement in the insolvency reform concerned relieving the courts of unnecessary and insignificant tasks that were among the main drivers of delays in the past. The new law significantly decreased the number of instances falling under the courts' jurisdiction. For example, judges are no longer responsible for establishing creditors' claims. Instead, insolvency practitioners are primarily responsible for assessing claims, and courts are only required to become involved in cases of dispute. Additionally, creditors' meetings are held outside of courtrooms, resulting in a significant decrease in courts' workloads. This change has also led to more speedy, flexible, and efficient interactions between creditors, debtors, and insolvency practitioners.

**Increased punctuality and efficiency.** Given the statutory deadlines envisaged by the new legislation, there is essentially no room for delays. Well-trained insolvency practitioners are also focused on managing the process in the fastest and most resourceful manner possible. In cases where the debtor, with the help of the insolvency practitioner, can demonstrate business viability, it takes only up to nine months to successfully complete the rehabilitation process. In fact, several rehabilitation cases have been successfully closed, including the largest ever rehabilitation in Georgia of the LLC Georgian Airways, which would have been inconceivable under the previous legislation.

Flexibility in the application of the procedural measures. The new law provides the parties involved, and in particular, the insolvency practitioners, with greater flexibility to apply measures that are most appropriate for the specific case and in the best interest of the creditors at large. For instance, the legislation allows for a range of measures to be employed by the practitioners and judges to preserve the insolvency estate. Furthermore, regarding the realization or sale of assets, the practitioner is now authorized to use any method of sale, as opposed to the mandatory auction prescribed under the previous legislation. This enhances the likelihood of utilizing the assets' value for the creditors' benefit.

### ROOM FOR IMPROVEMENT

Despite these positive developments, there are certain areas that require further improvement in practice. Firstly, the law presupposes the availability of an electronic case-management system, which is still in development. In its absence, processes are less streamlined and require special attention from the parties involved. Secondly, the courts still struggle to establish the business viability of the debtor, resulting in non-viable businesses entering the rehabilitation regime. In all rehabilitation cases open to this day, the debtor's management remained in place without due scrutiny by the courts to determine whether the existing management is capable of achieving rehabilitation. Thirdly, despite all attempts to make provisions of the new law unequivocal, there are still a number of undesired interpretations of the provisions of the law by the courts. To a certain degree, this can be rectified by court practice. However, it is already clear that technical amendments of the law will be necessary at a certain point.

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