



The USAID Economic Governance Program



## ReforMeter

# Insolvency Reform Assessment Report

ISET Policy Institute

2023

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### About the Insolvency Reform

Prior to the current Insolvency Reform, Georgia’s legislative framework regulating insolvency proceedings fell short of meeting international standards – it did not meet neither creditors’ nor debtors’ needs and failed to offer incentives to the insolvent companies to choose rehabilitation as their optimal strategy for resolving financial difficulties. To address such barriers, after multisectoral and thorough deliberations, the new law on “Rehabilitation and Collective Satisfaction of Creditors’ Claims” was enacted in Georgia and has been in force since April 2021. As its name suggests, main goal of the new law is collective satisfaction of creditors through achieving company’s rehabilitation, “and where the rehabilitation cannot be achieved, through the distribution of proceeds from the sale of an insolvency estate”<sup>1</sup>. The law introduces several innovative mechanisms, modifies institutional setup regulating insolvency proceedings and ensures that insolvency process is smooth and efficient.

### ReforMeter Methodology

Under the ReforMeter project, reform assessment is conducted through three distinct tools:

1. **Government survey** evaluates government progress in reform implementation across four domains: legal framework; infrastructure and budget; institutional setup; and capacity development. The survey measures government’s distance from the stated reform objectives on a scale from 0% (no action has taken place) to 100% (all desired systems are fully implemented, monitored and evaluated).
2. **Stakeholder survey** is used to assess the reform progress across four dimensions: reform content and adequacy; current performance; reform progress; and expected outcomes. Members of the stakeholders’ group (other than implementing GoG stakeholders) set scores on a scale from 1 (poor performance) to 10 (strong performance) for each dimension (for more details regarding the questionnaire please see Annex I).
3. **Reform-specific objective indicators**, used as a proxy for reform effectiveness, are designed to track reform progress.

Insolvency Reform assessment integrates all the above-mentioned evaluation tools with slight modifications in the government survey component. Considering that the reform is in its completion stage from the government’s side, instead of setting scores, the qualitative assessment of the government progress was conducted. The responsible government institutions’ progress in the reform implementation was evaluated against critical milestones that was initially planned to be achieved as identified based on desk research and consultations with key stakeholders of the reform (including

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<sup>1</sup> Article 1 of “Law on Georgia on Rehabilitation and Collective Satisfaction of Creditors’ Claims”. Available at: <https://matsne.gov.ge/en/document/download/4993950/0/en/pdf#:~:text=The%20purpose%20of%20this%20Law,sale%20of%20an%20insolvency%20estate.>



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government of Georgia, USAID Economic Governance Program and Business Rehabilitation and Insolvency Practitioners Association (BRIPA)).

The second assessment of the Insolvency Reform was conducted on December 20, 2022. In total, it is planned to conduct three PPD events devoted to the Insolvency Reform evaluation in one-year intervals under the ReforMeter project. Thus, Insolvency Reform will be again and finally evaluated in December 2023.

### Assessment of the Reform Implementing Institutions' Progress

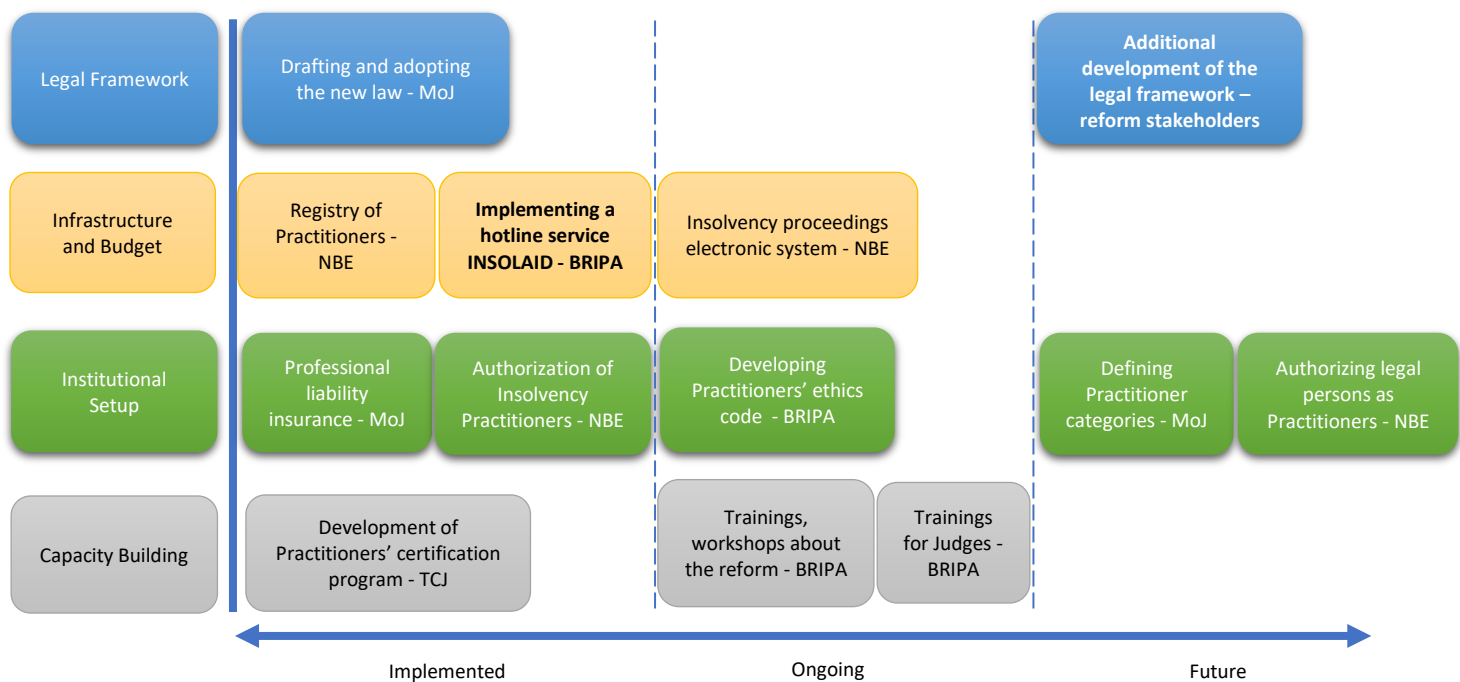
There are several institutions implementing Insolvency Reform in Georgia. The process has been championed by the Ministry of Justice (MoJ). Further, according to the new Law, two LEPLs of the justice system have been assigned core roles in the process of implementing the reform – i. National Bureau of Enforcement (NBE)<sup>2</sup> has been delegated authority to implement several activities belonging to “Infrastructure and Budget” and “Institutional Setup” categories; and ii. Training Center of Justice (TCJ) has been defined as a central body to develop and manage certification program for Insolvency Practitioners (IPs). Businesses Rehabilitation and Insolvency Practitioners' Association (BRIPA) is another central reform implementing stakeholder, representing sphere professionals – IPs, and the private sector. Figure I given below provides a detailed overview of main reform activities, their current status and respective implementing agencies as of December 2022.

**Figure1:** Reform activities, their status and implementing agencies

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<sup>2</sup> According to previous insolvency framework, LEPL National Bureau of Enforcement had crucial role in insolvency proceedings – it acted as a mandatory trustee during insolvency process; it managed the company bankruptcy in certain occasions defined by the law and offered auction services to the insolvents.

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Qualitative assessment of the reform's progress revealed that, overall, Insolvency Reform has been enacted successfully – implementing institutions have significantly progressed against almost all core activities of the reform. Compared to previous reporting period (December 2021), BRIPA has now activated the hotline service INSOLAID. The organization currently is in the final stage of creating ethics code for the Insolvency Practitioners. In addition, different professional or awareness raising trainings and workshops are also actively organized by the association.

Nevertheless, there have also been some challenges in the reform implementation process that are noticeable. First, electronic system for effective management of insolvency proceedings is yet to be delivered by the National Bureau of Enforcement. The process of elaborating the system has not been launched yet. Further, the registry of Insolvency Practitioners has been operating with minor flaws – the algorithm of the registry has put an uneven burden on certain IPs. Lastly, significant awareness-raising efforts are needed, so that the benefits of the new law are fully gleaned and utilized by the private sector.

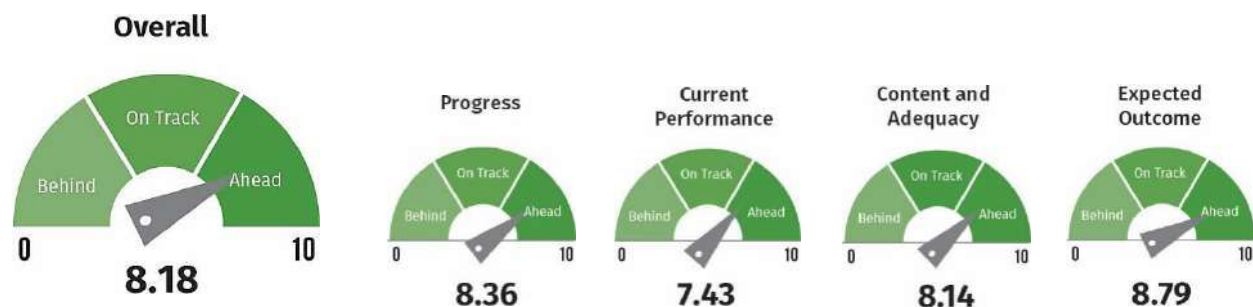
As for the future activities, defining practitioner categories and making the registration as an IP available for legal entities are still on the agenda of respective responsible institutions. What is more, to address some obstacles in the legal system regulating insolvency proceedings, interested parties (e.g. BRIPA) plan to initiate legislative changes to the current insolvency law.

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### Stakeholder Assessment

Second PPD event on the Insolvency Reform was attended by the representatives of all key reform stakeholders such as National Bureau of Enforcement (NBE), Businesses Rehabilitation and Insolvency Practitioners Association (BRIPA), Tbilisi City Court (TCC), and Training Center of Justice (TCJ). Representatives of the Revenue Service (RS), Business Association of Georgia (BAG) and Small and Medium Enterprises Development Association (SMEDA) also attended the event.

Overall, stakeholders assessed the Insolvency Reform with a score of 8.18, showing strong performance. Significantly, the evaluation in each assessment categories also showed strong performance. Compared to stakeholder assessment conducted during the first PPD event, overall score of the Insolvency Reform implementation increased by 0.43 points. In terms of the Content and Adequacy, stakeholder assessment dropped by 0.72 points, while evaluation of the reform's Progress and Expected Outcomes increased with 2.36 and 0.36 points, respectively.



### Public-Private Dialogue

PPD attendees shared their perspectives on the significance of the Insolvency Reform and suggested possible improvements to the current state of its implementation. According to the participants, the reform has been successful in its attempt to facilitate businesses rehabilitation. However, certain challenges remain that need to be addressed to ensure that the reform fully achieves its desired outcomes.

Precise insights from the PPD event are given below:

- Representative of the National Bureau of Enforcement (NBE) informed the event attendees about the progress that the bureau has against the core activities of the Insolvency Reform. As highlighted, top priority for the agency is to announce a call for the authorization of legal persons as insolvency practitioners. In addition, NBE plans to improve the algorithm for allocating practitioners to the insolvency cases. Both of these activities have to be initiated in the first half of 2023. As for creation of an electronic system for managing insolvency proceedings, according to the NBE representative, this process takes time and necessitates further donor support. The agency has communication with several donor organizations in this

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regard but no workable plan has been elaborated so far. As further highlighted, NBE considers to introduce the categorization of insolvency practitioners by 2024 as at this moment, there is no need for categorizing the IPs due to relatively small workload for already certified practitioners.

- Insolvency Reform was further overviewed by the representative of Revenue Service (RS), who highlighted several challenges in the reform area from the standpoint of RS, as a creditor in most insolvency proceedings:
  - Primarily, it was noted that there are technical barriers that constrain effective implementation of the reform. For instance, court rulings are often published at different times on two platforms - [ecourt.ge](http://ecourt.ge) and [matsne.gov.ge](http://matsne.gov.ge). According to the law, the appeal period for court's decision is five days after the publication of the ruling and it is often difficult to determine which publishing date is applicable. Thus, it is preferable to clearly attribute one platform a legally recognized validity.
  - Further, electronic service for the insolvency cases – [ecourt.ge](http://ecourt.ge) – was highlighted to be functioning with noticeable vivid errors. It is often difficult to navigate the website, as insolvency cases cannot be searched by their identification numbers. Also, cases are put in order according to the date when the first ruling was issued under the case. Instead, it would be better if the cases on the website were put in order according to the updates in rulings issued – i.e. cases with most recently updated rulings would come first on [ecourt.ge](http://ecourt.ge).
  - It was also highlighted that Georgian judges sometimes misrefer articles from the draft insolvency law instead of its adopted version, creating additional problems for the representatives of the Revenue Service in their operations. However, this issue is slowly being addressed and it is projected to be no longer relevant in the near future.
  - Representative of the RS further noted that the new law has to be specified in certain instances, such as in the case of article 55 (b) of the law, which improperly refers to ceasing (instead of cancelling) the enforcement measures against the insolvent companies.
  - On a more general note, it was highlighted that the Tax Code of Georgia and the new insolvency law are not coherent with each other in some instances, while the former does not acknowledge terms and innovative mechanisms introduced under the new insolvency framework (e.g. Company Voluntary Agreement (CVA), possibility of converting rehabilitation into the bankruptcy regime, etc.).
- Small and medium enterprises interest with regards to new Insolvency Reform was also discussed on the event. As pointed out, many businesses have been negatively affected by the pandemic in Georgia, however, this is not yet reflected in the number of filed insolvency cases to the court, which has not grown significantly in light of the pandemic. As noted, it is evident



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that businesses, particularly SMEs with no established corporate management culture, still lack information about the new legal framework. Significantly, Business Rehabilitation and Insolvency Practitioners Association works in this direction and has many ongoing activities to support businesses awareness raising on the new insolvency framework. One such supporting instrument is INSOLAID, a hotline service where businesses can receive all the necessary information on insolvency procedures in the country. It was additionally mentioned that INSOLAID has to be further popularized among the business sector.

- In the final part of the dialogue position of the Training Center of Justice (TCJ) regarding certification module for Insolvency Practitioners was overviewed. Representative of TCJ noted that there is a need for modifying the certification module – it is necessary to revise course contents and plan it appropriately in time. It is also important to create additional learning materials. According to TCJ representative, as of now there are around 30 applicants currently that plan to apply for the training module.

## Reform Tracking Indicators

Tracking reform-related objective indicators is one of the key components of reform progress evaluation under the ReforMeter project. As Insolvency Reform was implemented to address problems in several aspects of Georgian insolvency system, a set of indicators are selected in an attempt to capture developments in all respective reform areas. The selected indicators are based on the data retrieved from two main sources: a. the Supreme Court of Georgia, b. electronic portal for court cases registration – [ecourt.ge](http://ecourt.ge)<sup>3</sup>. The data retrieved from the Supreme Court of Georgia covers the period from 2011 to 2021. It is available at an aggregated level and allows for only general dynamic analysis of the number of insolvency cases (e.g. backlog of insolvency cases, initiated insolvency cases and completed insolvency cases in the given year). Meanwhile, the data retrieved from [ecourt.ge](http://ecourt.ge) offers any update on insolvency cases in the form of court rulings issued since May 2019. Hence it allows for the measurement and comparison of more sophisticated indicators, such as duration of insolvency proceedings and share of rehabilitation regime in initiated insolvency cases under the previous versus the current legal framework.

### 1. Number of Insolvency Cases

#### 1.1. Number of Insolvency Cases (the Supreme Court of Georgia)

One important indicator that could be used to diagnose the insolvency system efficiency is the number of initiated as well as completed insolvency cases across time. To better grasp the general picture, we first look at three indicators that are based on the aggregated data from the Supreme Court of Georgia: backlog of insolvency cases at the start of the year, number of insolvency cases that were filed for trial, and number of completed insolvency cases<sup>4</sup>.

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<sup>3</sup> [www.ecourt.ge](http://www.ecourt.ge)

<sup>4</sup> Insolvency cases filed for trial, that were examined in the court through delivering a decision

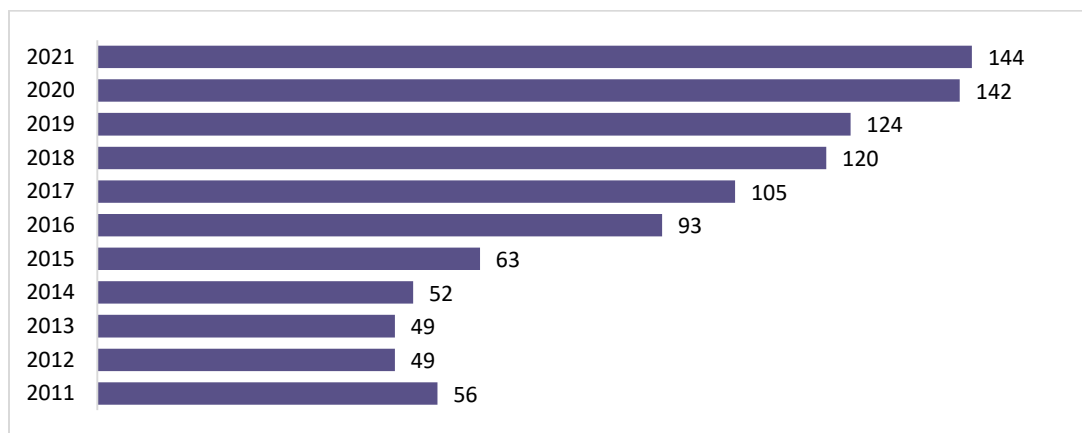


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### 1.1.1. Backlog of insolvency cases at the start of the year

The backlog of insolvency cases observed at the start of the year could be an indicator of a workload of Georgian courts in the process of managing insolvency proceedings. Figure 2 shows that starting from 2014 the backlog has been growing consistently in Georgia, albeit at a varying rate. More precisely, in 2020 backlog increased by almost 20 cases, while in the consecutive year the indicator rose by mere two cases.

**Figure 2. Backlog of insolvency cases at the start of the year**



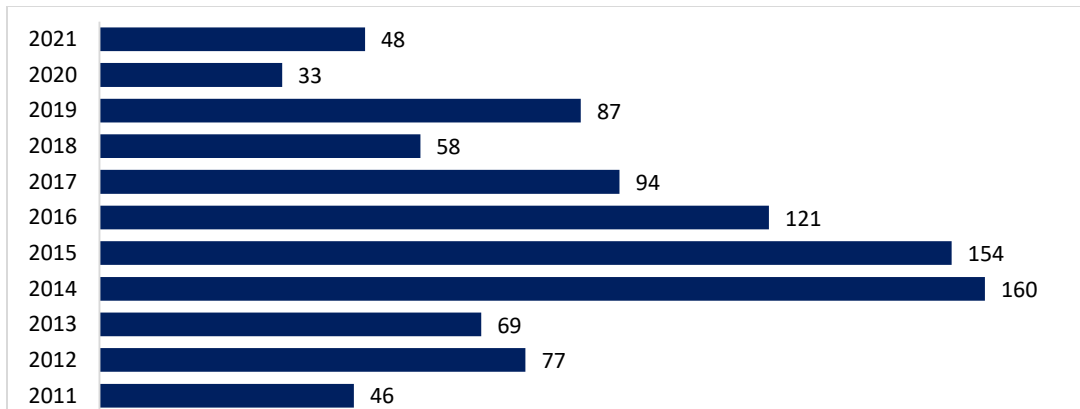
Source: Supreme Court

### 1.1.2. Number of insolvency cases that were filed for trial

Firm insolvency is a natural characteristic of a market economy. Moreover, as economic conditions worsen it is logical to expect that, countercyclically, more insolvency cases will be filed for trial in courts. Thus, after the sharp economic contraction in 2020 we would have expected to observe an increasing number of cases that were filed for trial. Looking at Figure 3, we can see that instead of an increasing trend, the number of initiated insolvency cases decreased in 2020 – this was probably conditioned by the application of quarantine and strict social distancing measures to prevent the spread of Covid-19 in the country. In light of adopting the new insolvency framework, the indicator showed only a slight increase in 2021 but still remained low compared to years of 2012-2019.

**Figure 3. Number of insolvency cases that were filed for trial**

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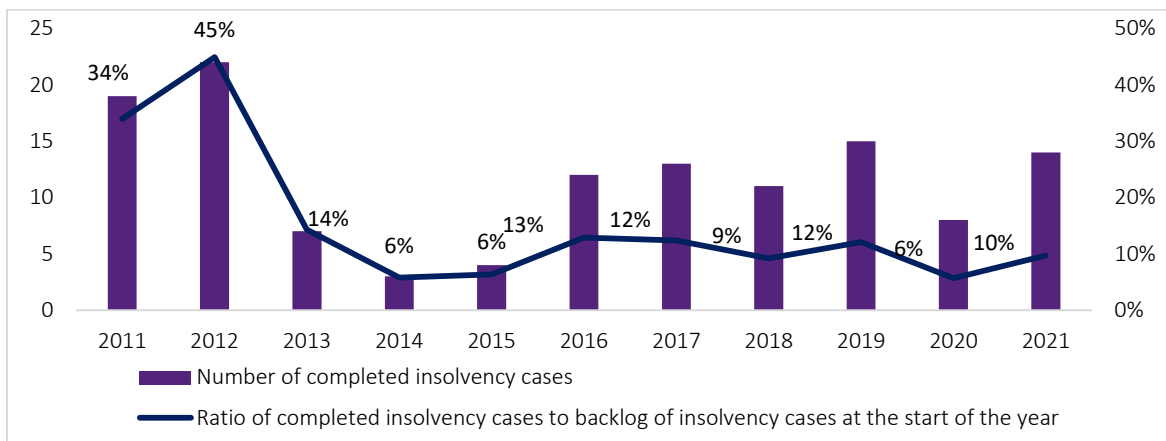


Source: Supreme Court

### 1.1.3. Completed Insolvency Cases

This indicator looks at the dynamics of completed insolvency cases<sup>5</sup>. We track both, the absolute number of such cases and their relative size compared to the backlog of insolvency cases at the start of the given year. The latter could be an indication of the relative size of the pool of the insolvency cases left unhandled. According to Figure 4, both absolute and relative measures of completed insolvency cases have been rather volatile over the last decade. This measurement suggests that the pace and effectiveness of decision-making process for insolvency proceedings have been quite low. The indicator does not show any improvement in 2021, the year when the new law was adopted. This observation is not surprising, as the 2021 figure is probably driven mostly by the cases initiated under the previous insolvency framework. Therefore, the effects of the reform have to be yet uncovered in the Supreme Court data.

**Figure 4. Completed Insolvency Cases**



Source: Supreme Court

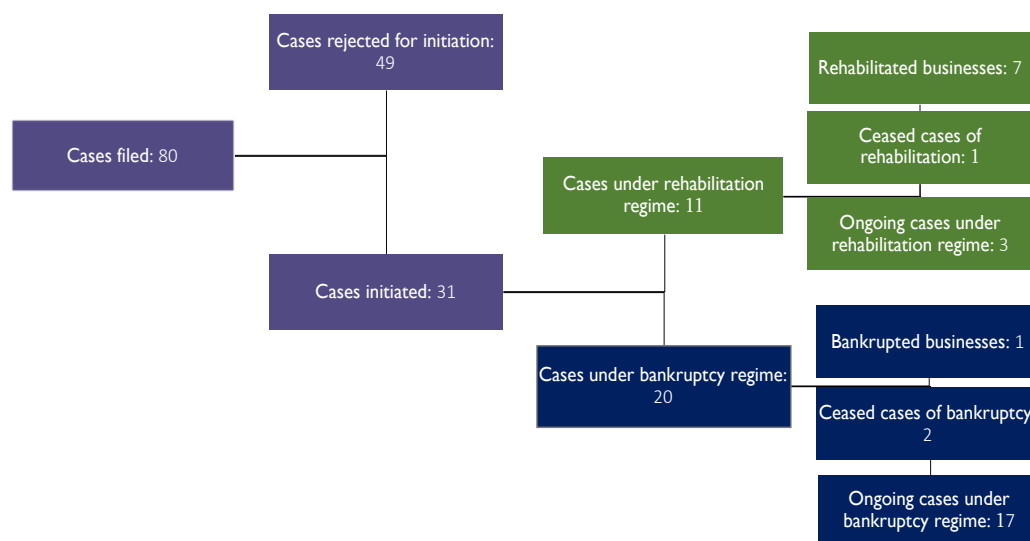
<sup>5</sup> Insolvency cases filed for trial, that were examined in the court through delivering a decision

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### 1.2. Number of Insolvency Cases (ecourt.ge)

Together with the Supreme Court data, we analyse data published on electronic portal of court cases – ecourt.ge. The portal includes information on insolvency cases that have been updated or initiated after May 2019, including the cases regulated under the new legal framework. Figure 5 depicts the snapshot of insolvency cases filed for trial under the new law. As the figure shows, of the total 80 filed cases, 31 were initiated. Among those initiated, 13 were started under rehabilitation regime, from which 2 were then converted to bankruptcy regime, 3 rehabilitation cases are ongoing as of last update, 1 case was ceased and 7 businesses were successfully rehabilitated<sup>6</sup>. As for the cases initiated under the bankruptcy regime, of the total 20 cases, 17 are still ongoing, there are two ceased bankruptcy cases and one business that was liquidated as a result of the insolvency proceedings.

**Figure 5. Snapshot of Insolvency Cases**



Source: ecourt.ge

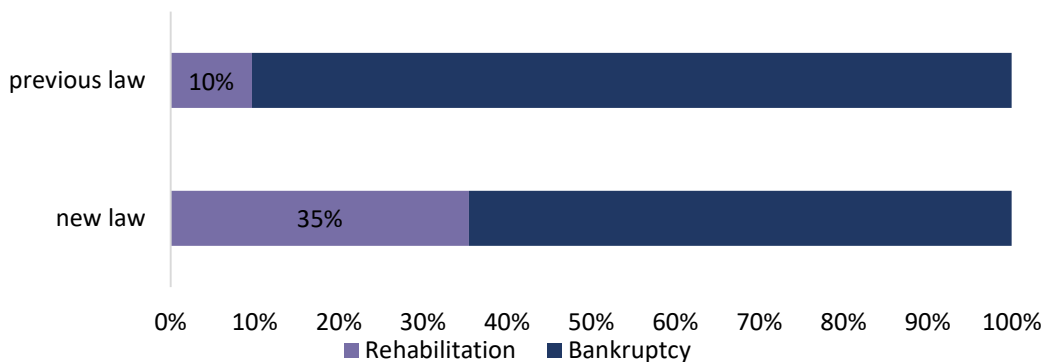
## 2. Share of Cases under Rehabilitation Regime

One of the key objectives of the Insolvency Reform is to assist survival of viable businesses through rehabilitation. Therefore, it is of utmost importance that increasing number of rehabilitation cases are initiated and successfully completed under the new insolvency framework. Evidently, some positive tendencies can be observed in this direction. As Figure 6 shows, under the current legal framework, the share of insolvency cases initiated under the rehabilitation regime stands at 35 percent. Meanwhile, the comparable figure for the cases under the previous law equals mere 10 percent.

<sup>6</sup> Rehabilitation case is categorized as successfully completed when rehabilitation plan has been approved by the court

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**Figure 6. Share of Cases under Rehabilitation Regime**



Source: *ecourt.ge*

### 3. Duration of Insolvency Proceedings

Prolonged and inefficient handling of insolvency proceedings was considered to be a major bottleneck of the previous legal framework. Therefore, one of the goals of the ongoing Insolvency Reform is to encourage swift resolution of initiated insolvency proceedings. With this objective, the new law introduced a cap of 4 and 9 months for Company Voluntary Agreement and rehabilitation regime completion, respectively.

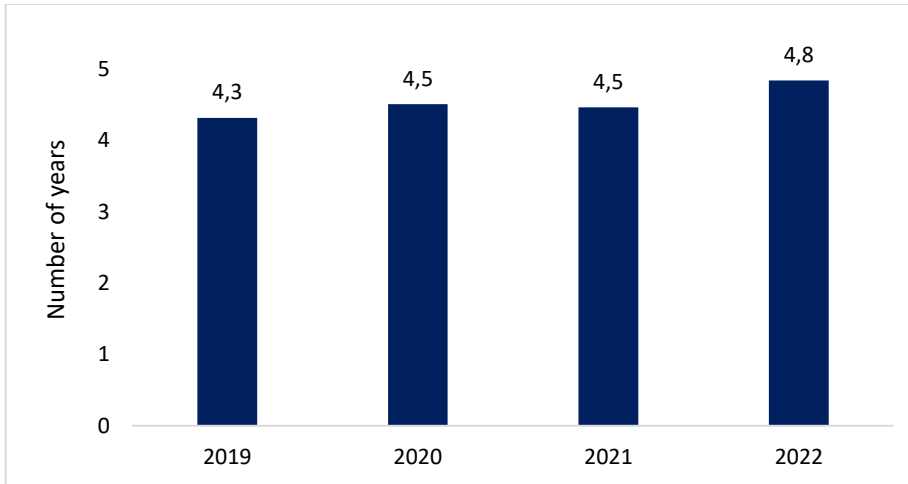
The case duration dynamics can be observed through two indicators: duration of completed insolvency cases and duration of ongoing insolvency cases.

#### 3.1 Duration of Completed Insolvency Case Proceedings

As Figure 7 shows, average duration of completed insolvency cases, measured as the number of years from the initiation until the completion of insolvency cases, has been relatively stable over the years. The duration ranges from 4.32 in 2019 to 4.8 in 2022. The indicator shows an unexpected growth in 2022, which is partly driven by one completed case that lasted for 20 years.

**Figure 7. Average Duration of Completed Insolvency Case Proceedings (2019-2022).**

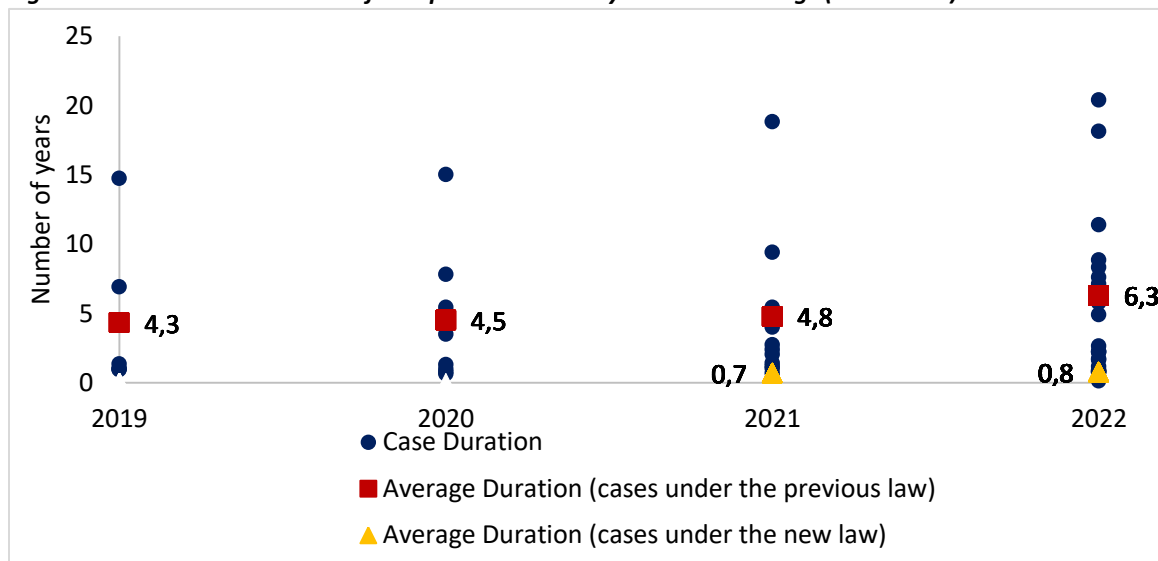
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Source: *ecourt.ge*

If we take a closer look at the durations case by case (Figure 8), we can observe some interesting tendencies. More specifically, it is clear that average duration of cases under the new law (as shown by the yellow triangle) is significantly less compared to the average duration of cases under the previous legal framework (as indicated by the red quadrant). However, these figures should be interpreted with caution. For example, there are still 17 ongoing bankruptcy cases as of January 2023 (two of which were converted from the rehabilitation regime) that were initiated under the new legal framework and until most of them are completed, we may lack the full clarity for judging the impact of new regulations.

**Figure 8. Duration Distribution of Completed Insolvency Case Proceedings (2019-2022)**



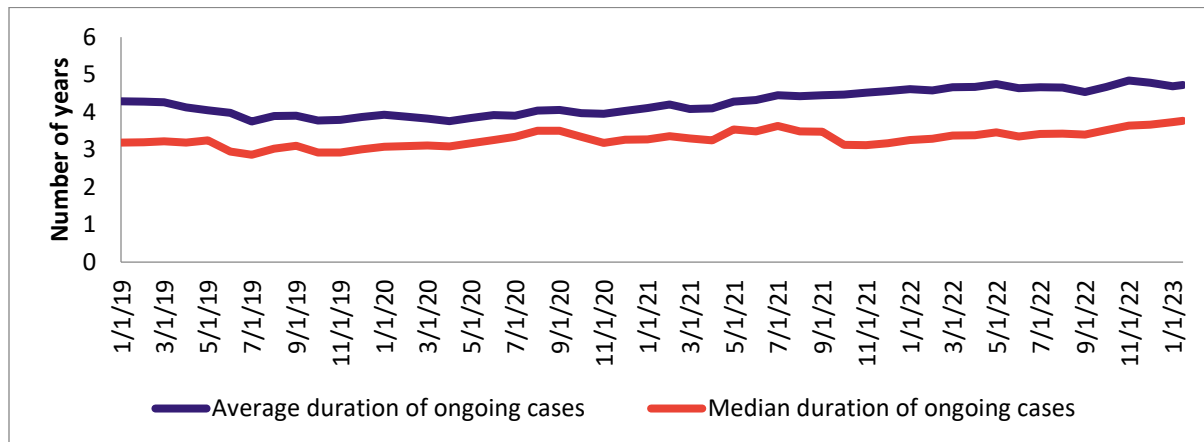
Source: *ecourt.ge*

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### 3.2 Duration of Ongoing Insolvency Case Proceedings

Yet another indicator for evaluating the dynamics of insolvency case durations is the duration of ongoing cases over the years. To evaluate this aspect, median as well as average durations of ongoing insolvency cases are tracked over time in order to at least partially exclude the bias caused by the outliers. As Figure 9 shows, both median and average duration of ongoing insolvency proceedings has been consistently increasing over the years (although a small drop in median duration can be observed mid-2021). This tendency again highlights the backlog of prolonged insolvency cases that started under the previous law and are still ongoing, inflating the average.

**Figure 9. Average and Median durations of Ongoing Insolvency Case Proceedings (2019-2022).**



Source: [ecourt.ge](http://ecourt.ge)



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### Annex I. Stakeholder Survey Questionnaire

Please assess reform for each dimension listed below on a scale from 1 (poor performance) to 10 (strong performance) :

#### Content and Adequacy

1. Is the reform-related policy objectives set by the Georgian Government adequate to Georgian reality?

1	2	3	4	5	6	7	8	9	10
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2. Is the policy-making and legal-drafting process conducted in an inclusive manner that enables the active participation of stakeholders?

1	2	3	4	5	6	7	8	9	10
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#### Progress

1. Is the economic reform agenda currently implemented by the Government in this area progressing as planned?

1	2	3	4	5	6	7	8	9	10
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2. Do the reform measures address binding constraints to growth?

1	2	3	4	5	6	7	8	9	10
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#### Current Performance

1. What is your assessment of the performance of the Georgian economy in the reform area

1	2	3	4	5	6	7	8	9	10
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#### Expected Outcomes

1. Will the reform reach its targets?

1	2	3	4	5	6	7	8	9	10
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2. Does the reform propose efficient measures to reach its targets?

1	2	3	4	5	6	7	8	9	10
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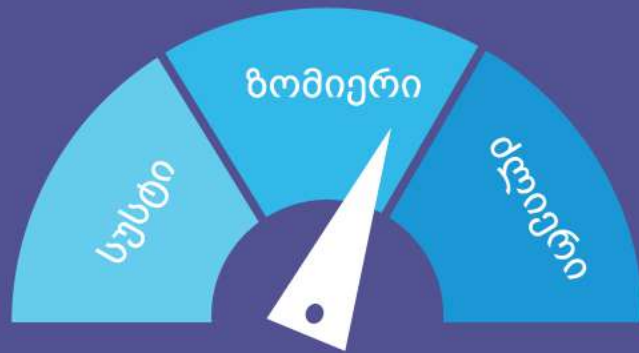




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## Annex II. Insolvency Reform II PPD Event Presentation

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# რეფორმები

შენი გზამკვლევი რეფორმებში

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# Agenda



- Event Launch and introduction of the Reformer PPD platform
- Introduction of the Insolvency reform
- Evaluating the reform progress and presenting the reform indicators
- Public-private dialogue and stakeholder assessment of the reform



# About Reformer



- Reformer aims to track progress of the selected economic reforms, facilitate dialogue between the reform stakeholders and support the reform implementing agencies to increase awareness on and efficiency of the selected reforms.
- I phase of the project: 2017-2019
- New phase of the project 2021-2024
- Selected reforms:
  - Insolvency reform
  - Capital market development reform
  - Public procurement reform
  - Water resources management reform
  - E-commerce reform
  - Tourism reform
  - Regulatory Impact Assessment (RIA) institutionalization
  - State-Owned Enterprises (SOE) reform

# Reform Outcomes and Goals



Legal Framework

Infrastructure and Budget

Institutional Setup

Capacity Building

Efficiency of insolvency proceedings is enhanced

Efficiency in insolvency cases distribution and technical management is increased

IP institute is strengthened

Qualification of IPs is enhanced

Awareness regarding the novel insolvency framework is increased

Assets value of the insolvent enterprise and recovery rate of creditors is increased

Average duration of insolvency proceedings is decreased

Number of rehabilitated businesses is increased

Business environment is improved

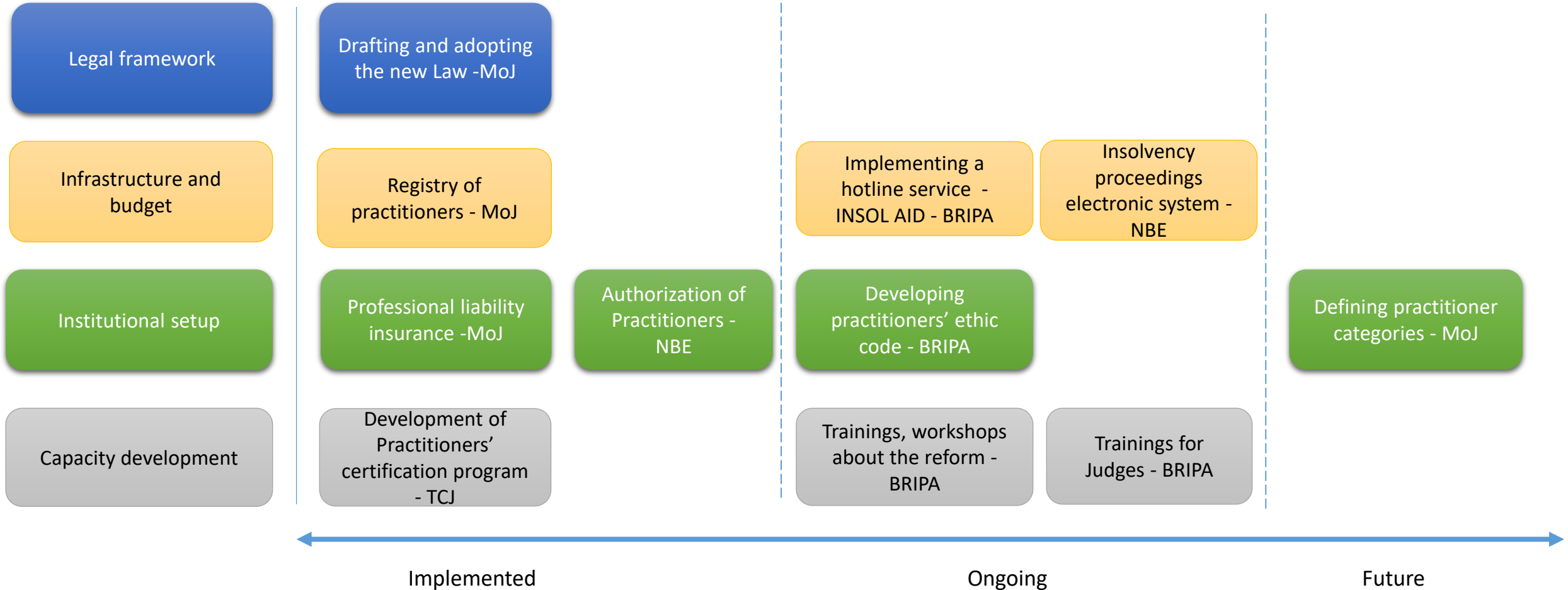
Governance quality is improved

Medium-term outcomes

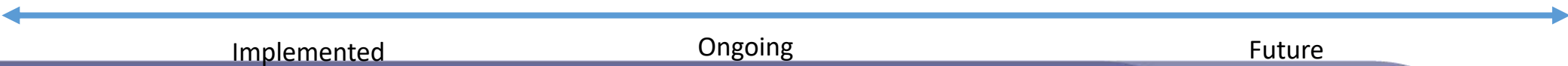
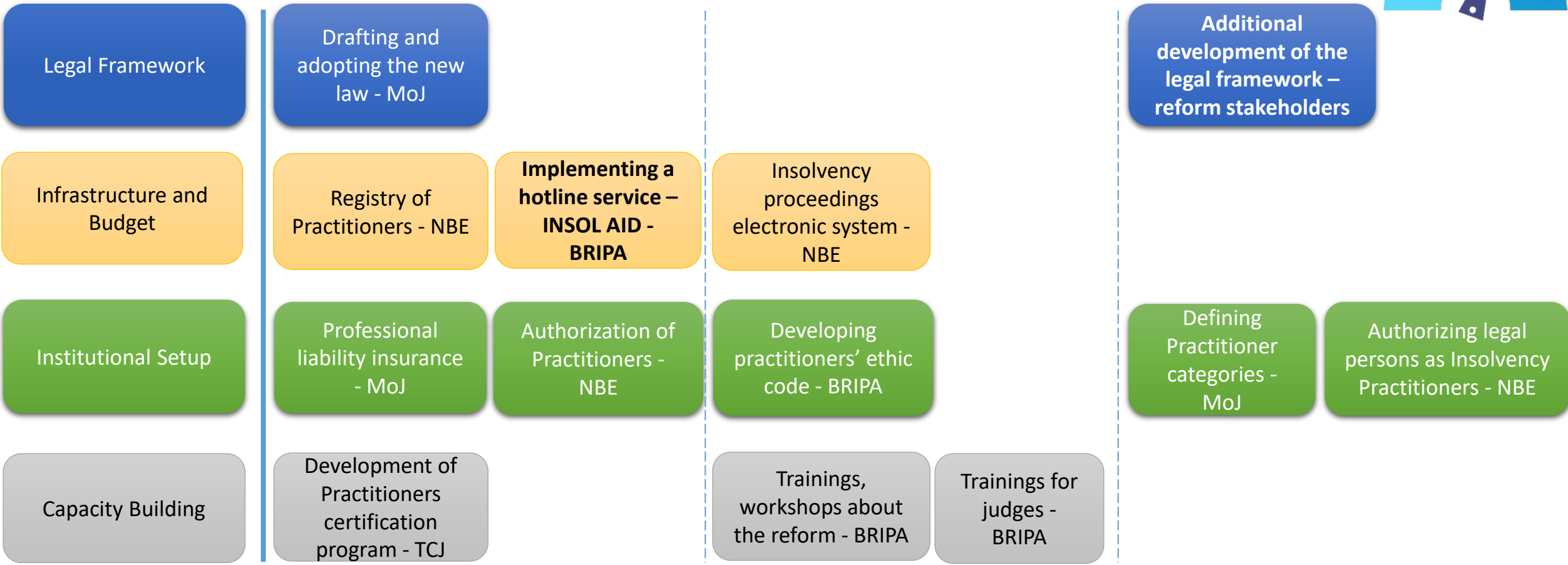
Reform Goals



# Insolvency Reform Activities – As of I PPD Event

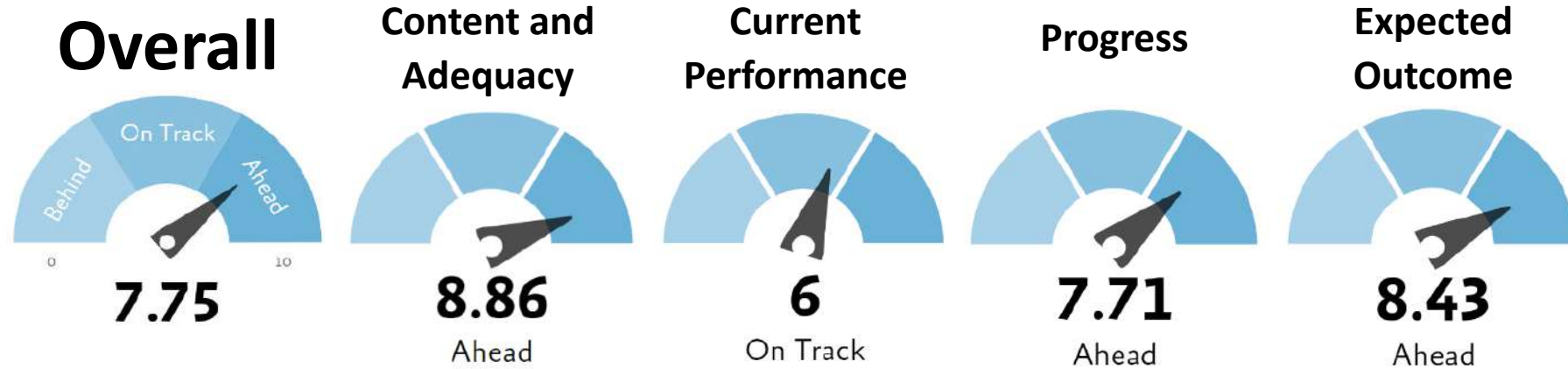


# Insolvency Reform Activities – Current Status





# Reform's Primary Assessment According to Stakeholders



**USAID**  
აშშ-ის საერთაშორისო განვითარების აგენცია

USAID-ის ეკონომიკური მმართველობის პროგრამა

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# Reform Tracking Indicators



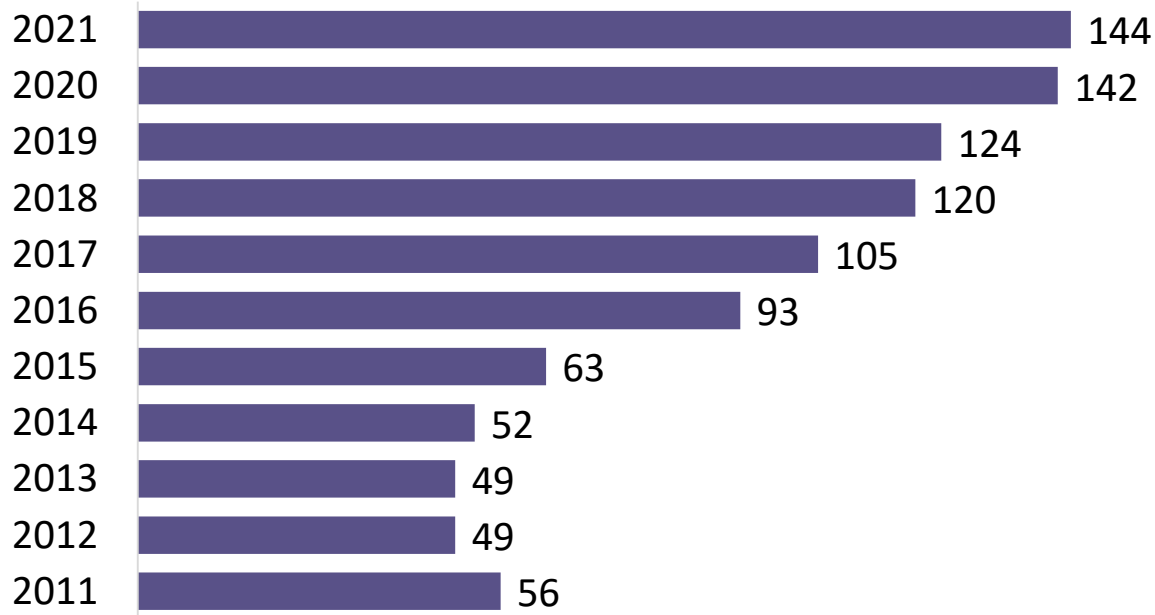
USAID-ის ეკონომიკური მმართველობის პროგრამა



# Number of Insolvency Cases

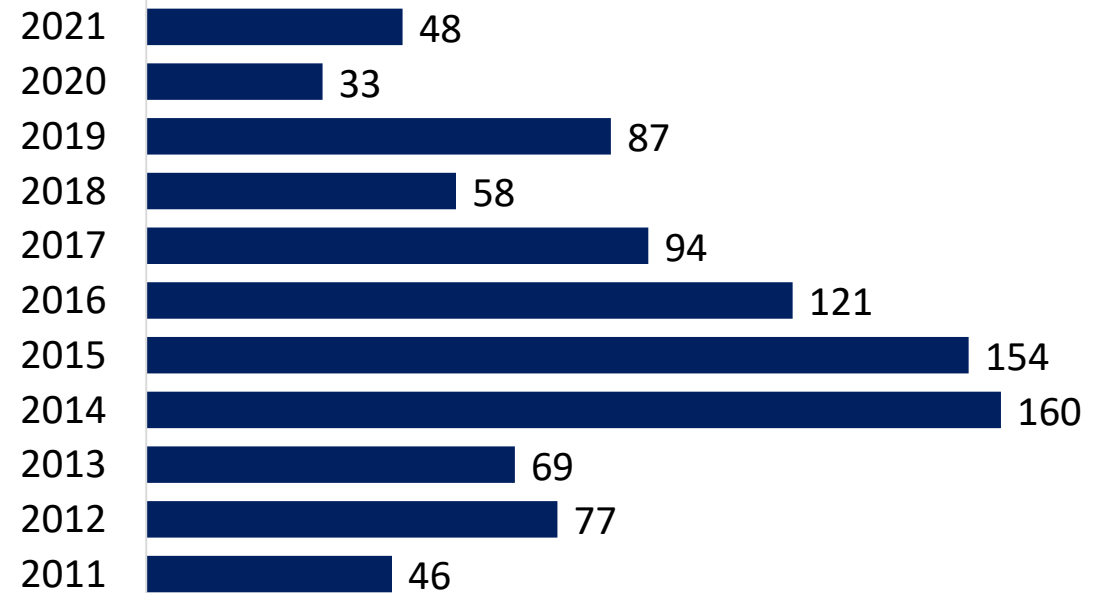


Backlog of insolvency cases at the start of the year



Source: Supreme Court

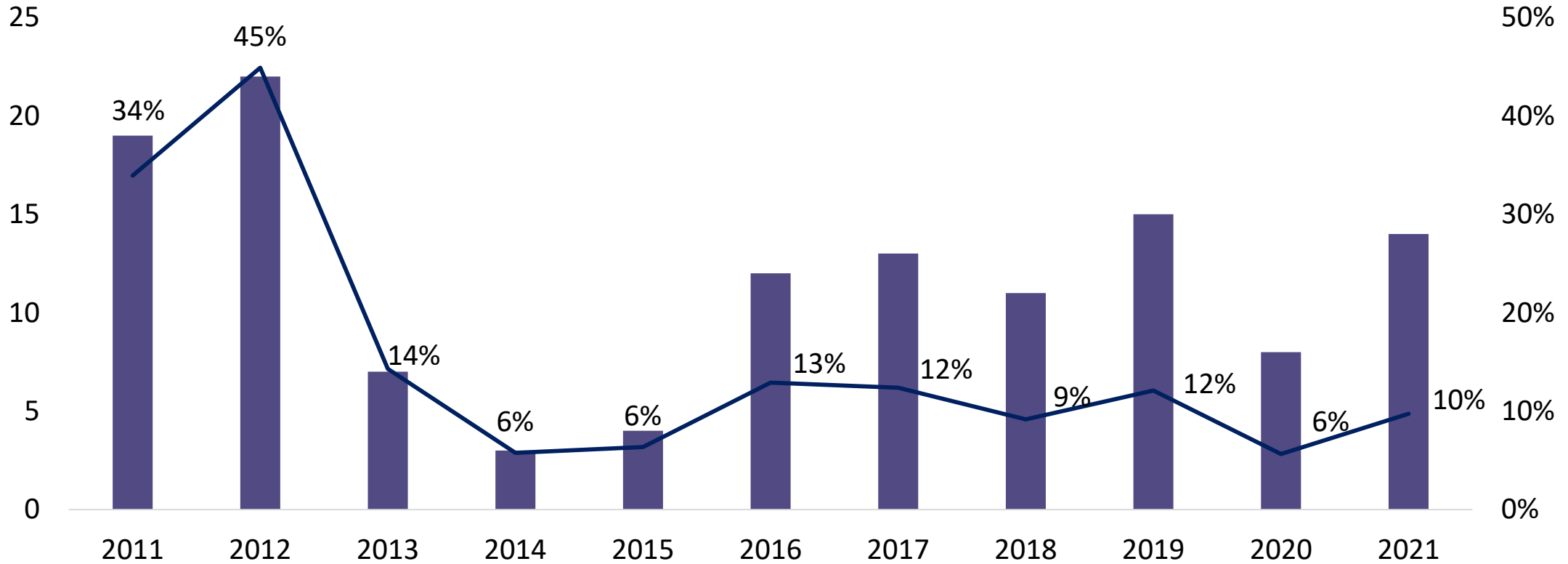
Number of insolvency cases that were filed for trial



Source: Supreme Court



# Completed Insolvency Cases



■ Number of completed insolvency cases

— Ratio of completed insolvency cases to backlog of insolvency cases at the start of the year

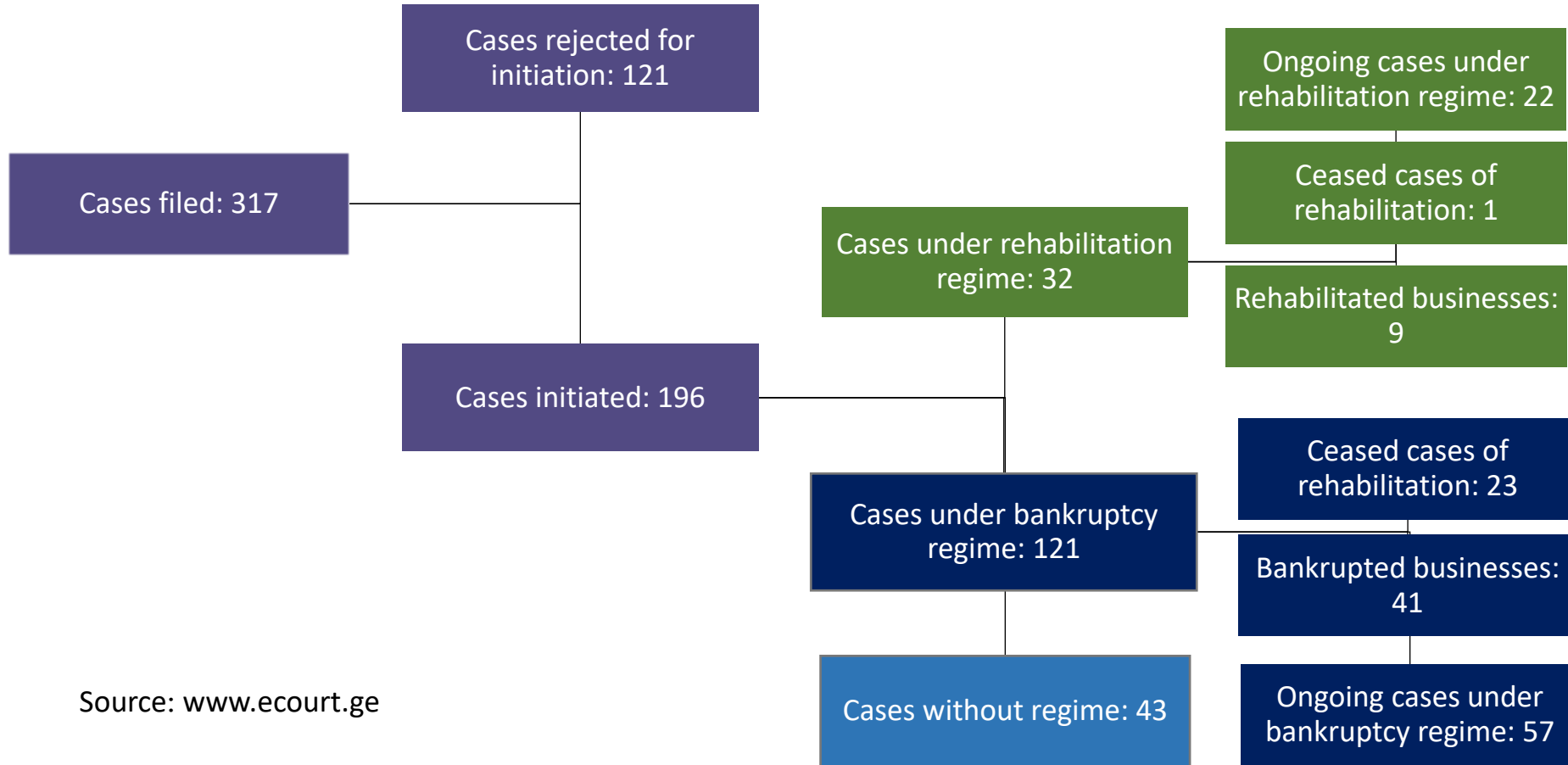
Source: Supreme Court



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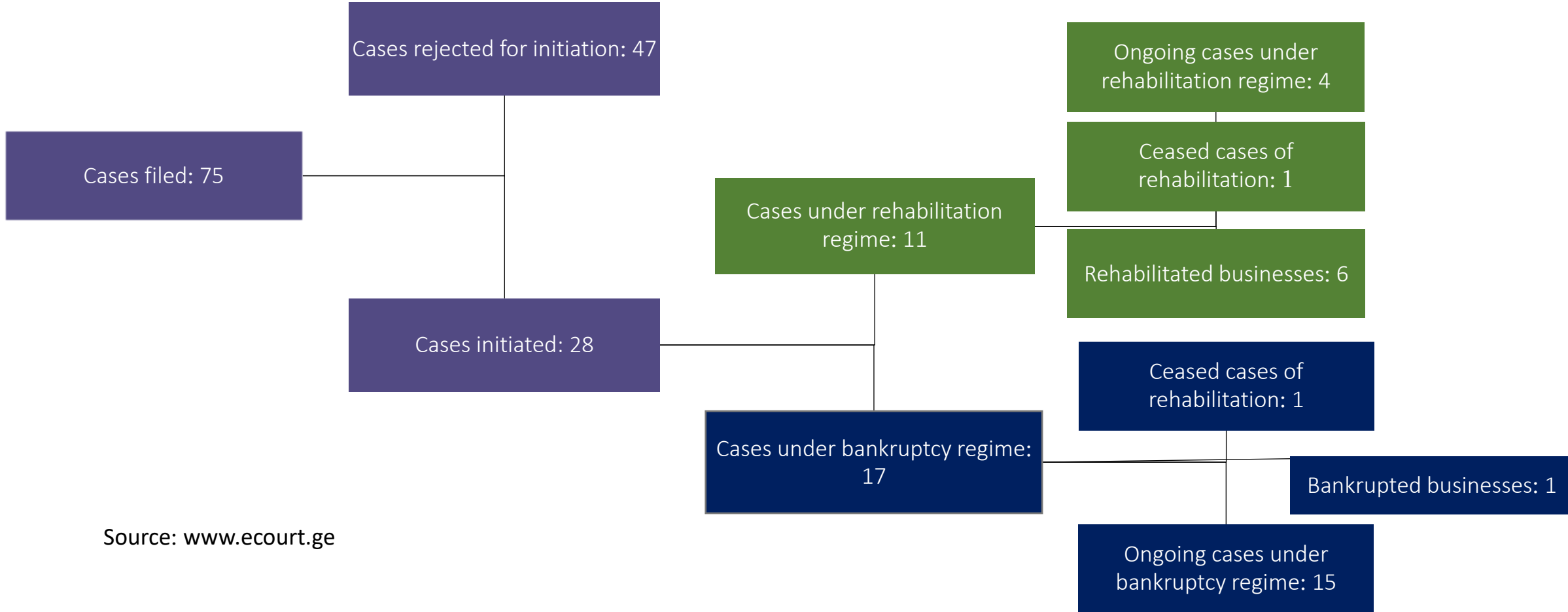
# Number of Insolvency Cases (ecourt.ge)



Source: [www.ecourt.ge](http://www.ecourt.ge)



# Number of Insolvency Cases under the New Law (ecourt.ge)

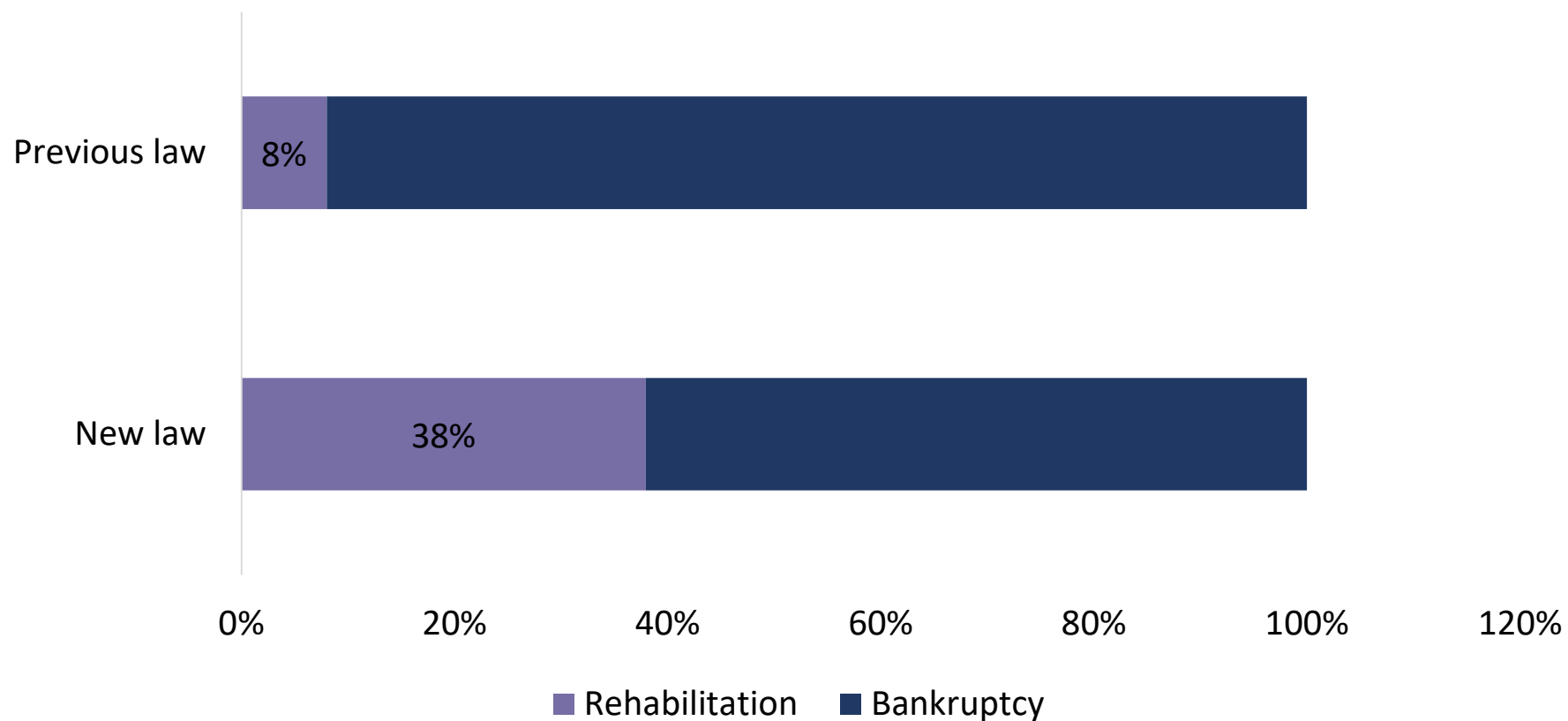


Source: [www.ecourt.ge](http://www.ecourt.ge)





# Share of Cases under Rehabilitation Regime



Source: [www.ecourt.ge](http://www.ecourt.ge)

Note: In case of previous law only cases initiated between 7/14/2019 and 3/31/2021 are considered

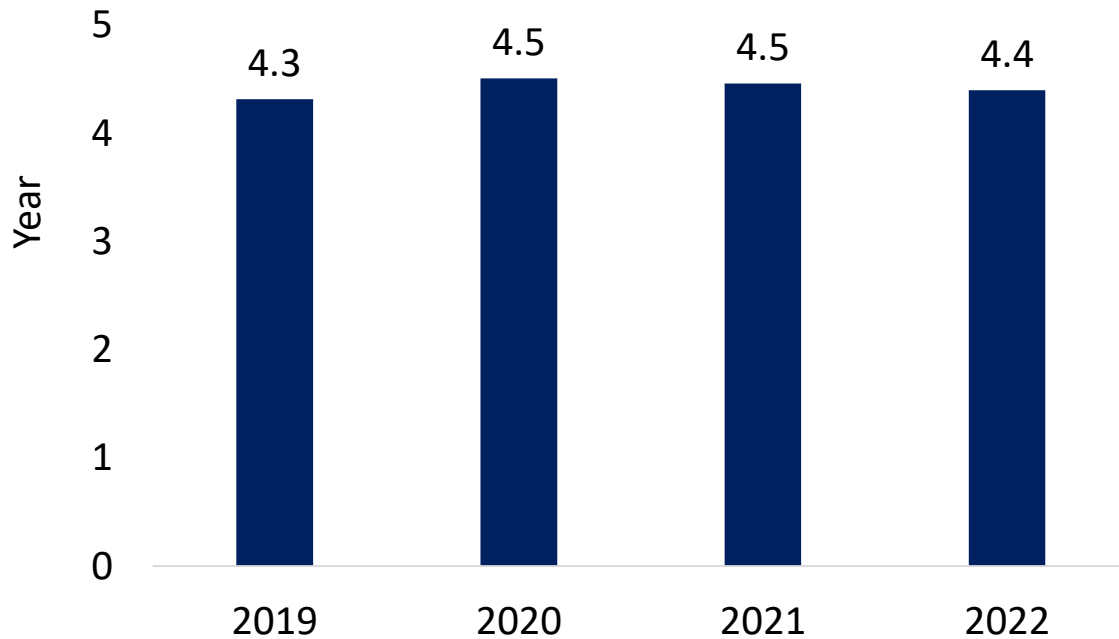




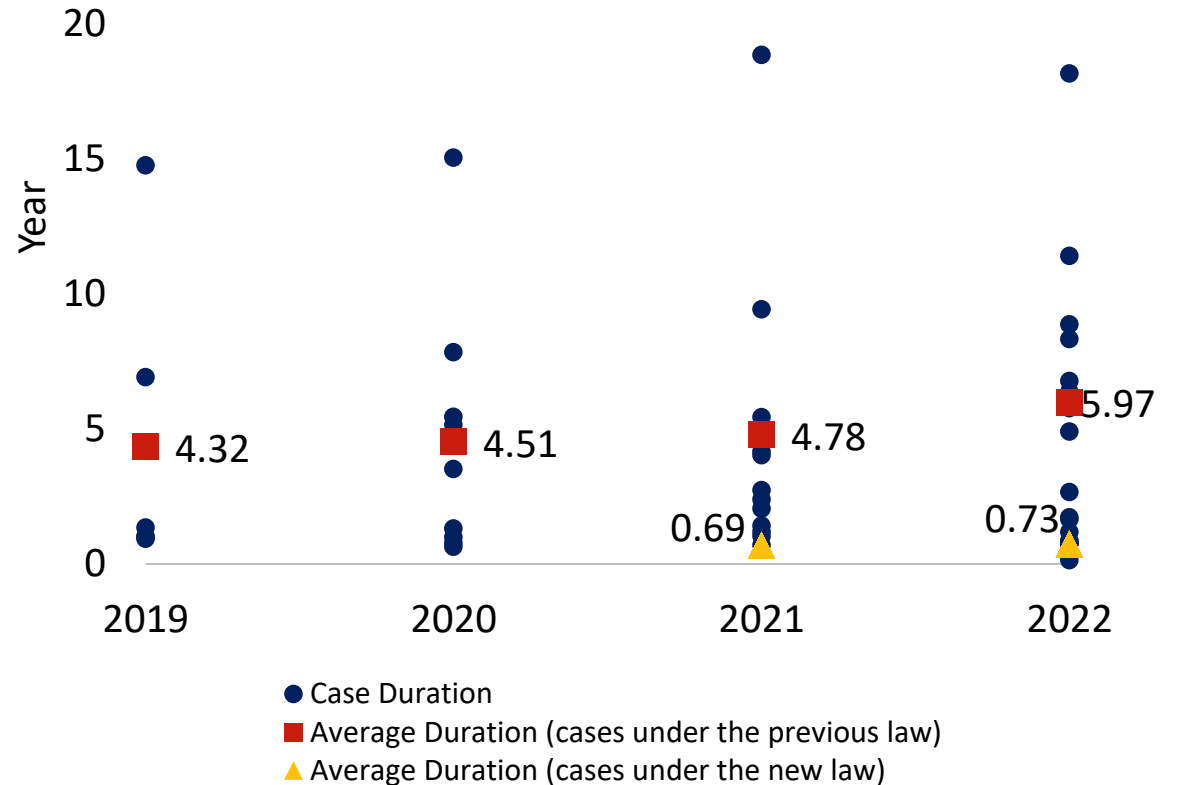


# Average Duration of Completed Insolvency Case Proceedings

Average Duration of Completed Insolvency Case Proceedings



Duration Distribution of Completed Insolvency Case Proceedings



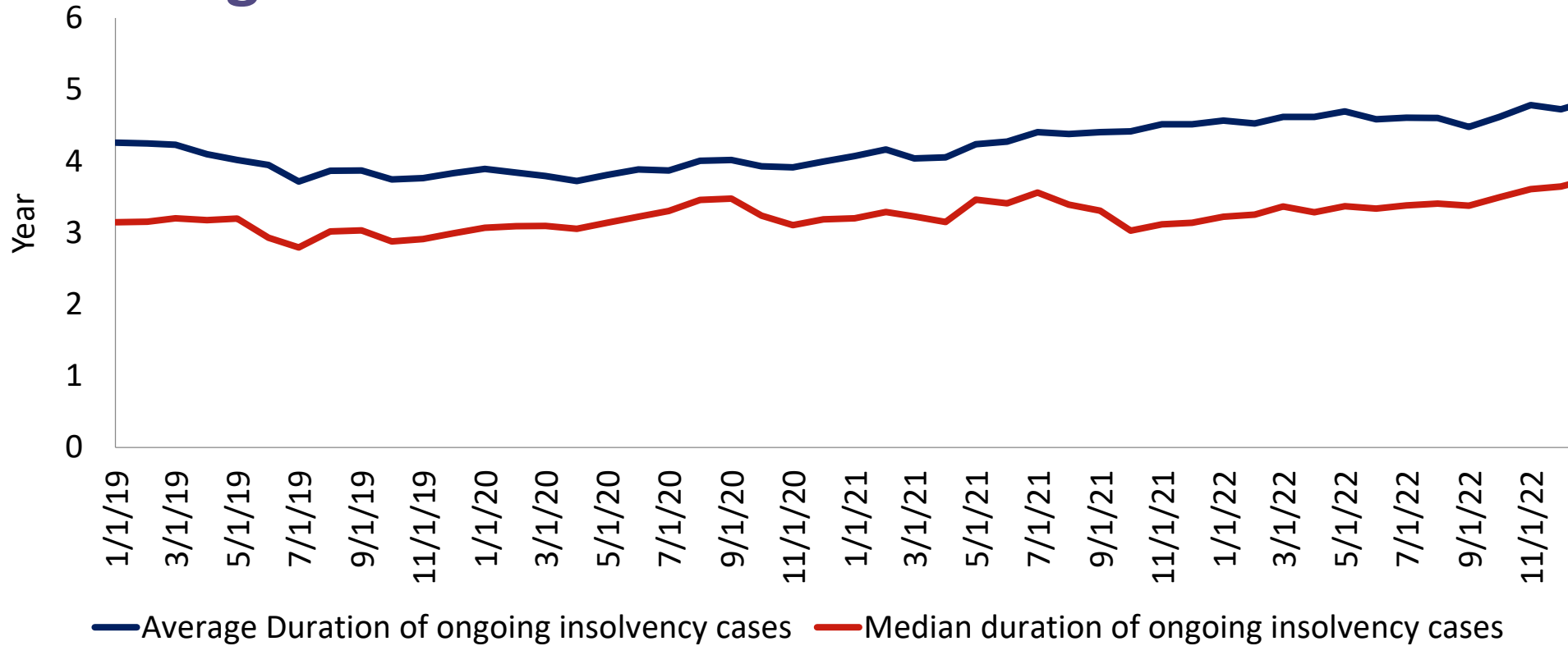
Source: [www.ecourt.ge](http://www.ecourt.ge)



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# Average and Median Duration of Ongoing Insolvency Case Proceedings



Source: [www.ecourt.ge](http://www.ecourt.ge)



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# Core Challenges According to Stakeholders as of 1st PPD Event



## **-Low awareness regarding the new legal framework among private sector representatives**

- Low acknowledgment of insolvency case proceedings as an opportunity for businesses rehabilitation
- Main challenge for effective implementation of the new legal framework

## **-Regulation of insolvency of physical persons**

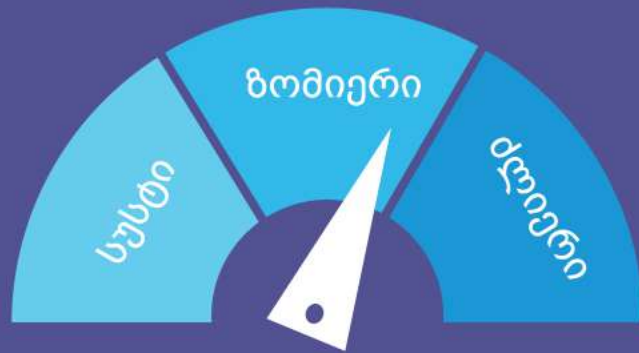
- Significant precondition for effective and complete functioning of insolvency framework in the country

## **-Challenges in the process of establishing infrastructural/professional institutions supporting the reform**

- Absence of electronic system for insolvency case proceedings
- Short duration of Insolvency Practitioners' certification program



## USAID Economic Governance Program



# რეფორმები

შენი გზამკვლევი რეფორმებში

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