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**North Macedonia becomes the First EU Candidate Country to adopt the Directive on Restructuring and Insolvency**

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*Introduction*

In February 2022, the Ministry of Economy of the Republic of North Macedonia prepared, in cooperation with International Financial Corporation (World Bank Group), a Draft Law on Insolvency and submitted it to the Parliament (Собрание).[[1]](#footnote-1) The objective of this law is to provide protection of investors and their business, flexible and simplified proceedings for small enterprises and to clarify the conditions for participation of creditors in insolvency proceedings. One of the biggest novelties, not only in North Macedonia, but among all EU candidate countries in the West Balkans, is the introduction of preventive restructuring proceedings for debtors in difficulties. This instrument should allow the debtor to negotiate debt settlement options with its creditors and timely avoid insolvency. For an EU candidate country, it will also mean harmonization of the national legislation with the Directive on Restructuring and Insolvency.[[2]](#footnote-2)

*Scope of the New Law*

*Ratione materiae*, the new law is intended to cover a broader scope of relations. It will replace the Law on Bankruptcy[[3]](#footnote-3) and resolve the issues regulated by the Law on Out-of-Court Settlements.[[4]](#footnote-4) Thus, it will include both in-court and out-of-court insolvency prevention instruments. Moreover, it provides that all proceedings related to insolvency including preventive restructuring are to be carried out as court proceedings. This does not exclude the possibility for the debtor to reach out-of-court settlement agreement, but it remains only a private concluded agreement.

*Ratione personae*, the law covers the insolvency of a debtor, both legal and natural persons, business entity or individual. Also, it can be a property of a legal entity in which the state of the Republic of North Macedonia or local self-government units are partners, i.e., shareholders, as well as over the property of a public company that operates in the public interest, if not excluded by the law. Bankruptcy proceedings can also be conducted over the property of an economic interest community, over the assets of a deceased person and over the common assets of spouses. It may also be opened even after the liquidation of business company, until the sale of assets which enter the liquidation estate.

Persons whose assets are not subject to preventive restructuring, pre-bankruptcy reorganization and bankruptcy proceedings are: Republic of North Macedonia, funds that are financed from the budget of the Northern Republic Macedonia, pension and disability insurance funds, the health insurance fund, state administration bodies and local units of self-government as well as other legal entities with public authority. The preventive restructuring and pre-bankruptcy reorganization proceedings cannot be carried out over banks, savings banks, insurance companies, brokerage companies, financial companies, leasing companies or other financial institutions. However, the provisions of this law that refer to bankruptcy proceedings are applied to the bankruptcy proceedings over banks, savings banks, insurance companies and brokerage companies, financial companies, leasing companies and other financial institutions, if not otherwise regulated by in this matter primarily the applicable law.

*Structure of the Law*

The Draft Law on Insolvency is composed of 473 articles, divided into 13 sections. The Draft Law on Insolvency regulates:

1. the goals and conditions for the implementation of the early warning system;
2. the goals and conditions for opening and implementing the procedure for preventive restructuring (*постапката за превентивно преструктуирање*) ;
3. the pre-bankruptcy reorganization proceedings based on a proposed reorganization plan and the legal consequences of opening these procedures (*предстечајна реорганизација*);
4. the objectives and conditions for opening and implementing bankruptcy proceedings (*стечајната постапка*);
5. the bodies (elements) of the bankruptcy proceedings;
6. the legal consequences of opening bankruptcy proceedings against a legal entity;
7. the management, disposal and sale of the property included in the bankruptcy estate (*стечајна маса*);
8. the settlement of creditors’ claims in bankruptcy proceedings;
9. implementation of proceedings according to the submitted reorganization plan in bankruptcy proceedings;
10. the objectives and conditions for opening and implementing bankruptcy proceedings against an individual debtor;
11. the legal consequences of implementing bankruptcy proceedings;
12. the release from other obligations;
13. the special types of bankruptcy proceedings for debtors with the status of a trader;
14. personal management;
15. bankruptcy proceedings with a foreign element and other issues in connection with the bankruptcy proceedings.

The provisions of the law stipulate that companies that have submitted a proposal for the initiation of these procedures for the resolution of insolvency at an early stage remain in management of the companies and may run the business with view to overcoming the financial difficulties (i.e., as debtor in possession).[[5]](#footnote-5)

In the open bankruptcy procedure, there is also the possibility of reorganization of the bankrupt debtor. However, this can only occur at the proposal of the bankruptcy administrator or creditor, provided the return on creditors’ claims in bankruptcy proceedings will result in a higher percentage than that they would have received on a sale of the assets. The implementation of the bankruptcy reorganization also means the possibility of saving the business of the bankrupt debtor. In the bankruptcy procedure, the bankruptcy administrator will undertake the management of bankruptcy proceedings and control the assets of the bankrupt debtor.

Moreover, the law indirectly regulates areas relevant to the course of bankruptcy proceedings insofar as it amends several laws in the financial field. Considering the scope, the implementation of the Directives from 2017 and 2019, placing emphasis on the restructuring of enterprises, it is considered that the adoption of this law is currently the most important step. Once it begins to be applied and after regular, updated data is received from the bankruptcy departments in the basic courts as well as from the bankruptcy administrators and the Central Registry of Business Entities, the next stage of arrangements would be the introduction of personal bankruptcy.

*Key Novelties in the New Law*

The biggest novelties in the new law are the early warning system and preventive restructuring procedure.

The system for early warning is established in order to enable debtors and early recognition of financial difficulties with view to taking measures in a timely manner to implement procedures for the purpose of overcoming a future insolvency, as well as providing timely information to creditors for the purpose of taking appropriate measures. As one of the objectives in respect of the preventive restructuring procedure, the Draft Law on Insolvency sets out its purpose to enable a debtor who is likely within a period of one year to become unable to pay its debts to take measures to restructure its obligations and other measures that will be needed to overcome the causes leading to their inability to pay debts (insolvency) on the basis of a restructuring agreement concluded with creditors.

The pre-bankruptcy reorganization proceedings are carried out in order to a restructure the debtor’s business, based on a proposed reorganization plan, which will enable:

1. continuation of the debtor’s business venture, i.e., the profitable part of that venture as well as to perform the financial restructuring of the debtor’s business to make it possible;
2. current partners of the debtor to be able to keep the share in the basic capital which corresponds to the value of the remaining property of the debtor as well as more favourable conditions for the payment of claims on the creditors;
3. more favourable terms for creditors for the payment of their claims where bankruptcy proceedings have been opened against the debtor assets, taking into account the payment order of claims.

*Procedural Steps*

1. Court Competence

In preventive restructuring, pre-bankruptcy reorganization and bankruptcy proceedings, the basic courts in whose territory the debtor’s seat is located are exclusively competent. In preventive restructuring, pre-bankruptcy reorganization and bankruptcy proceedings, a request for the determination of another subject matter and territorially competent court cannot be submitted. The person authorized to submit a proposal for opening a preventive restructuring procedure is the legal representative of the debtor. The court decides on opening the preventive restructuring procedure after a proposal is submitted and the necessary legal conditions are met.

1. Preventive Restructuring

A preventive restructuring is carried out in respect of a debtor who is likely to become insolvent within one year to enable it, on the basis of a restructuring agreement, to take measures to restructure its own obligations and other measures that will be needed to overcome the reasons due to which it may become unable to pay (insolvent). A restructuring agreement (*договор за преструктуирање*) is an agreement concluded by the debtor with the creditors with whom:

1. the participants in the agreement are defined (obligations towards creditors, the necessary restructuring measures, the term of implementation of those measures, the conditions under which those measures are implemented); and
2. other mutual rights and obligations are established in respect to the restructuring.

The proposal for an agreement has to include:

1. a review of creditors’ claims that have not been collected from the debtor with the balance of the last quarter before the investment of the proposal for opening the procedure for preventive restructuring (*основен преглед на побарувања на доверителите*);
2. an audit report on engagement for contractual execution procedures regarding financial information of the basic review of creditors’ claims in which the auditor gave an audit opinion without remarks;
3. notarized statements of the creditors for consent to the opening of the procedure for preventive restructuring, to include namely creditors who have claims against the debtor together making up 30% of the total amount of claims against the debtor and/or from creditors who have claims against the debtor who together constitute 75% of the amount of all claims against the debtor. During the procedure of preventive restructuring, the statute of limitations does not run with respect to creditors’ claims.

The restructuring agreement enters into force when consent to its conclusion is given by:

1. the debtor’s bodies according to the law, the statute or the debtor’s agreement;
2. creditors, whose claim amounts included in the basic review of claims are at least 75% of the amount of all unsecured claims included in the review; and
3. where secured claims covered by the contract that are included in the basic review of claims are at least 75% of the amount of all secured claims included in the review.

The agreement and the conditions for its implementation have to be reviewed by an authorized auditor. Any such restructuring agreement enters into force upon the finality of the court decision for its approval. It produces legal effect towards the claims of creditors who agree to the conclusion of the agreement, in the manner and in the amount specified in the agreement.

1. Pre-bankruptcy Reorganization Proceedings

The pre-bankruptcy reorganization proceedings can be opened if the court determines that the debtor is close to being unable to pay. It exists in pre-bankruptcy reorganization proceedings, if the court determines that the debtor will not be able to fulfil its existing obligations after they are due. Bodies that implement pre-bankruptcy reorganization proceedings are the court and the commissioner. A commissioner is appointed from among bankruptcy administrators who are on the list of bankruptcy administrators and have passed the exam for specialist knowledge about the reorganization plan.

The court is obliged to decide on the proposal to open the pre-bankruptcy reorganization proceedings within eight days from the day of submitting the proposal. The legal effects of the decision to open pre-bankruptcy reorganization proceedings does not affect the business activity of the debtor. Until the completion of pre-bankruptcy reorganization proceedings until its completion, initiating and conducting civil litigation, administrative, arbitration and security proceedings as well as enforcement against the debtor’s assets is not allowed.

Each group of creditors, with a right to vote, votes on the plan for reorganization separately. The rules for the grouping of creditors that refer to the reorganization proceedings in bankruptcy are also applied in this procedure. Creditors are deemed to have accepted the plan of reorganization, if a majority of all creditors with voting rights voted for it and, if in each group, the sum of the claims of the creditors who voted for the plan at the hearing is greater than the sum of the claims of the creditors who voted against accepting the plan.

Creditors who, in relation to the debtor, are related companies and persons in accordance with the provisions of the Law on Commercial Companies, do not have the right to vote. If the majority to accept the plan for reorganization is reached, the court shall approve the proposed plan for reorganization. The approved reorganization plan has legal effect against creditors who did not participate in the pre-bankruptcy proceedings reorganization based on a proposed plan, as well as against the creditors who participated in the procedure, and their claim will be further determined.

1. Bankruptcy Proceedings

Bankruptcy proceedings in North Macedonia against the debtor can be opened if the court determine the existence of insolvency or over-indebtedness. A proposal for the opening of bankruptcy proceedings to the court can be submitted by:

1. the debtor;
2. a personally responsible partner in the company;
3. a creditor.

The debtor is deemed unable to pay if, within a period of 45 days from any of his accounts, with any payment transaction holder, the amount that should have been paid based on a valid reason for payment has not in fact been paid. This does not apply if the debtor that is a third party during the previous procedure paid all the obligations due, based on an executory document which was enforced over any of its accounts or if a debt is assumed. That the debt has been settled and the obligation of the debtor fulfilled can only be proven with a public document or with a certificate issued by the central registry. Over-indebtedness exists if the debtor who is a legal entity has property amounting to less than its existing liabilities. Also, if during the supervision period, it is determined that the plan for reorganization cannot carried out, any bankruptcy creditor, i.e., the bankruptcy administrator, can submit a proposal for opening bankruptcy procedure.

When deciding on the proposal for opening bankruptcy proceedings, the court may allow the debtor, whether a legal entity or an individual, to manage and dispose of the assets within the bankruptcy estate under the supervision of a commissioner (*лично управување од должникот*). This procedure will be subject to the general provisions for the bankruptcy procedure. The court will allow debtors the right to personal administration:

1. at the request of the debtor;
2. if the opening of the bankruptcy proceedings was requested by a party representing the creditor, with the creditor’s consent regarding the request; or
3. where the court is convinced that, considering the circumstances of the case, such a solution is unlikely to lead to a delay in the procedure or cause damage to creditors.

Bankruptcy proceedings can also be carried out over business property with community interest, over the property of a deceased person and over the joint property of spouses. Bankruptcy proceedings can be opened even after the liquidation of a commercial company, as long as the sale of property within the liquidation mass has not started.

*Summary*

The adoption of the new Law on Insolvency is expected in 2023. Its structure is novel and represents an advance on the previous legal framework. The fact it has been designed to reflect the Directive on Restructuring and Insolvency is of great interest and it will certainly prove a novelty for the jurisdiction compared to what has gone before.

1. See Ministry of Economy of the Republic of North Macedonia, available at: <www.economy.gov.mk/mk-MK/news/predlog-na-zakon-za-insolventnost.nspx>. [↑](#footnote-ref-1)
2. Directive 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132. [↑](#footnote-ref-2)
3. Official Gazette of Republic of Macedonia No. 34/2006, 126/2006, 84/2007, 47/11, 79/13, 164/13, 29/14, 98/15 and 192/15. [↑](#footnote-ref-3)
4. Official Gazette of Republic of Macedonia No. 12/2014. [↑](#footnote-ref-4)
5. See Parliament of the Republic of North Macedonia (Собрание на Република Северна Македонија, Парламентарен Институт), available at:

   <www.sobranie.mk/content/%D0%9F%D0%B0%D1%80%D0%BB%D0%B0%D0%BC%D0%B5%D0%BD%D1%82%D0%B0%D1%80%D0%B5%D0%BD%20%D0%B8%D0%BD%D1%81%D1%82%D0%B8%D1%82%D1%83%D1%82/14.pdf>. [↑](#footnote-ref-5)