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Insolvency and Corporate Reorganization: Modern Legal Mechanisms for Overcoming Financial Instability

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Abstract: The subject of this paper is corporate reorganization as a legal mechanism for overcoming the financial instability of commercial companies, with a particular focus on a comparative analysis between the substantive legal framework in the Republic of North Macedonia and modern European standards for preventive restructuring. The paper examines the "second chance" mechanisms available to business entities.

The primary objective of the research is to conduct a comprehensive analysis of relevant domestic legislation (the Law on Commercial Companies of the Republic of North Macedonia and the Law on Bankruptcy/Insolvency of the Republic of North Macedonia) and assess their practical applicability in addressing corporate financial distress.

The motivation behind this topic stems from the systemic dilemmas and challenges faced by judicial authorities, company management, and broader stakeholders during periods of financial distress. The pressing need to modernize reorganization institutes, driven by Directive (EU) 2019/1023 on preventive restructuring frameworks, necessitates a critical examination of Macedonian judicial practice (particularly through case studies) and the formulation of concrete de lege ferenda proposals for harmonization with the European "rescue culture" model—prioritizing enterprise recovery over liquidation.

Keywords: insolvency, reorganization, bankruptcy, business continuity, liquidation.

I. Introduction

Financial instability and insolvency represent serious challenges for commercial companies, necessitating efficient legal mechanisms for their resolution. In contemporary legal doctrine and practice, the focus has progressively shifted from traditional liquidation toward corporate reorganization, which provides a viable "second chance" for distressed entities. This paper provides a comprehensive analysis of corporate reorganization as a legal framework for managing financial instability, placing special emphasis on a comparative evaluation of substantive legal solutions in the Republic of North Macedonia against modern European standards for preventive restructuring.

The Macedonian legal framework establishes a clear distinction between illiquidity—understood as a temporary cash flow shortage—and insolvency, defined as a legal state of permanent inability to pay verified after 45 consecutive days of default. Insolvency serves as an objective statutory ground for initiating bankruptcy proceedings, which consequently triggers significant restrictions on management powers. Consequently, this paper investigates reorganization as an alternative, constructive instrument whose primary objective is maximizing creditor recovery through the preservation of debtor business continuity. Unlike the value-destructive nature of piecemeal liquidation, reorganization is both economically and socially justified: it safeguards employment, preserves commercial networks, and retains the going-concern enterprise value.

Nevertheless, domestic practice faces persistent systemic shortcomings, primarily attributable to the absence of institutionalized Early Warning Tools and deep-seated societal stigma surrounding bankruptcy. The imperative to modernize Macedonian restructuring frameworks is further underscored by Directive (EU) 2019/1023. In this context, the paper explores structural reform pathways, notably evaluating the fundamental legislative choice between enacting a dedicated special law (lex specialis) and amending the existing Law on Bankruptcy. The ultimate objective is to offer concrete de lege ferenda proposals for integrating the "debtor-in-possession" regime and aligning the Macedonian legal order with the European rescue culture paradigm.

II. Concept and Legal Nature of Insolvency

2.1. Defining Insolvency in Macedonian Law

In Macedonian law, insolvency is not merely an economic condition, but a distinct legal status that empowers—and under specific statutory circumstances obligates—the debtor or creditors to institute bankruptcy proceedings.

While the term "insolvency" is standardized, broadly recognized, and applied as an overarching umbrella concept in comparative legal theory and EU directives (encompassing both inability to pay and balance-sheet over-indebtedness), the Law on Bankruptcy of the Republic of North Macedonia operates terminologically with the concept of "inability to pay" (неспособност за плаќање).

In comparative jurisdictions and EU regulatory instruments, "insolvency" designates the comprehensive crisis state of an enterprise; however, in the domestic Law on Bankruptcy, this term is not codified as an independent statutory institute. The Macedonian legislature consciously opted for an empirical, descriptive definition of inability to pay, deliberately avoiding abstract legal classifications to center focus on the factual reality of non-payment.

Insolvency is defined as the debtor's permanent inability to pay and represents an objective factual state signaling that the debtor can no longer settle its maturing pecuniary obligations, thereby directly jeopardizing creditor security and the broader certainty of commercial transactions.

Statutorily, a debtor is deemed unable to pay if, within an uninterrupted period of 45 days, an amount due has not been settled from any of its bank accounts across payment system providers pursuant to valid execution/payment titles. Such inability to pay (insolvency) is verified exclusively by means of an official certificate issued by the Central Register of the Republic of North Macedonia.

Macedonian bankruptcy law characterizes a distressed debtor through three alternative statutory tests:

-Permanent inability to pay (Cash-flow test): The debtor is deemed insolvent if it fails to fulfill its monetary obligations within 45 days of their maturity date. This functions as a liquidity test—the debtor lacks immediate liquid cash to settle matured claims; however, this does not necessarily indicate that the entity lacks balance-sheet assets or that maturing debts could not be addressed through asset monetization or debt refinancing.

-Over-indebtedness (Balance-sheet test): This condition materializes when the debtor's total assets, even if liquidated at prevailing fair market values, are insufficient to cover existing total liabilities. This represents a solvency test indicating de facto bankruptcy. It establishes that even if temporary cash-flow shortages were bridge-financed via debt, the enterprise remains structurally unviable because its accumulated obligations exceed the future earning capacity and enterprise value of the company.

-Imminent / Impending insolvency: The debtor is still capable of discharging current debts or has not crossed the 45-day default threshold, meaning it is not yet de facto insolvent, but operates under a high threat of impending insolvency. A debtor is deemed to be in imminent distress when it is foreseeable with high probability that, in the forthcoming period, it will become unable to settle its financial obligations upon maturity. Assessing this condition requires a thorough analysis of contractual claims, credit obligations, market volatility, and operational factors adversely impacting commercial viability.

By establishing these three alternative criteria, the Law on Bankruptcy (despite employing the term "inability to pay" rather than "insolvency" in its statutory headings) encompasses all potential dimensions of corporate distress—from imminent risk to fully materialized balance-sheet collapse.

2.2. Distinction Between Illiquidity and Insolvency

The distinction between illiquidity and insolvency is fundamental to both the economic and legal assessment of commercial enterprises. Although commonly used interchangeably in colloquial discourse, in corporate and commercial law they designate two strictly distinct stages of financial distress.

Illiquidity is primarily an operational economic category denoting a temporary deficiency of liquid funds to satisfy maturing short-term liabilities. An enterprise may possess substantial real estate, inventories, plant equipment, or long-term receivables that cannot be converted immediately into liquid cash. In such circumstances, total assets exceed total liabilities (equity remains positive). The enterprise is fundamentally solvent and economically viable, but experiences technical cash-flow disruptions. Illiquidity does not constitute a legal ground for initiating bankruptcy proceedings. It is typically resolved through standard corporate management measures—such as short-term bank financing, debt rescheduling, operational restructuring, factoring, or aggressive receivables collection.

Illiquidity operates as a systemic alarm warning management that the enterprise is approaching a zone of operational risk. If timely corporate interventions (debt restructuring, cost rationalization) are executed during this preliminary stage, the entity can be revitalized autonomously without external judicial interference. In this sphere, general corporate law governs (the Law on Commercial Companies).

Insolvency, conversely, is a formal legal status indicating that financial distress has escalated into a statutory bankruptcy event. It reflects an objective condition wherein the debtor is permanently and irreversibly unable to perform its monetary obligations within statutory periods (45 days of unserviced claims).

Insolvency is frequently accompanied by balance-sheet over-indebtedness (liabilities exceeding total assets), where debt obligations surpass the aggregate enterprise asset value.

Crucially, insolvency constitutes the mandatory legal ground for commencing formal bankruptcy proceedings. It fundamentally transforms the company's legal regime: statutory management loses its autonomous administrative powers, and a court-appointed bankruptcy trustee together with judicial supervision are activated to safeguard creditor assets.

By adopting an objective 45-day non-payment threshold, the Macedonian legislator established a precise legal line of demarcation. Once this threshold is crossed, financial distress ceases to be merely an internal corporate affair and becomes a matter of public legal concern. From that juncture onward, the collective interests of creditors supersede the autonomous will of company shareholders.

2.3. Statutory Grounds for Opening Bankruptcy Proceedings

Pursuant to Article 5 of the Law on Bankruptcy, the principal statutory ground for opening bankruptcy proceedings or formal reorganization is the debtor's inability to pay. This legal condition is verified when the debtor fails to settle matured monetary claims for an uninterrupted duration of 45 days, proved solely by a certified document—an official certificate issued by the Central Register of North Macedonia. The statutory framework explicitly equates reorganization with bankruptcy regarding entry prerequisites; consequently, inability to pay serves as the uniform statutory threshold not only for company liquidation, but also for triggering legal mechanisms designed for corporate rescue, debt workout, and enterprise rehabilitation.

A petition for the opening of bankruptcy proceedings may be filed by creditors who have a legal interest and evidence of their monetary claim, by the debtor itself through its authorized governing bodies, and by the liquidator if, in the course of liquidation, it is determined that the assets are insufficient to settle the debts.

The debtor must possess assets of sufficient value to cover at least the costs of the preliminary and bankruptcy proceedings. If the assets are negligible or non-existent, and none of the participants pays an advance deposit for the costs, the court simultaneously opens and closes the proceedings.

The creditor must prove the existence of its claim (invoices, contracts, enforceable instruments) and attach evidence of the debtor's inability to pay (a certificate from the Central Register confirming that the bank account has been blocked for more than 45 days). Furthermore, the creditor is obligated to pay an advance deposit for the costs of the preliminary proceedings.

The debtor must submit a complete inventory of its assets, a list of creditors and debtors, financial statements for the recent business years, and a report stating the causes that led to the insolvency.

2.4. Legal Consequences of the Onset of Insolvency

The legal consequences triggered by the onset of insolvency (inability to pay) aim at securing the integrity of the bankruptcy estate and guaranteeing equal treatment among creditors, establishing a strict regime of restricted asset disposition. Upon the formal opening of bankruptcy proceedings, the legal right to administer and dispose of the bankruptcy estate is immediately transferred from the management bodies of the debtor to the bankruptcy trustee. This transfer prevents unauthorized dissipation of assets designated for collective creditor satisfaction. These legal effects alter the corporate status of the entity, transitioning it from an autonomous market participant into an entity operating under judicial control whose objective is orderly liquidation or supervised reorganization.

The legal consequences of the opening of proceedings take effect on the day immediately following the publication of the official notice on the court's notice board, establishing an unmistakable temporal demarcation for the termination of debtor autonomy. From this moment, statutory administrative and supervisory powers over corporate assets cease completely and vest entirely in the bankruptcy trustee as legal representative and custodian of the estate. Simultaneously, significant financial consequences take effect: statutory and contractual interest ceases to accrue on unsecured claims, preventing uncontrolled debt expansion and stabilizing the estate, whereas for secured claims, interest accrues strictly up to the verified value of the collateral securing the underlying debt.

Upon opening the proceedings, the law establishes full protective custody over the estate, divesting prior company officers of operational disposal authority. Any subsequent legal acts or unauthorized dispositions executed by prior management are legally void ab initio. To deter asset dissipation, the statute imposes personal civil liability upon corporate directors with their personal assets. Concurrently, all prior contractual or statutory transfer restrictions are neutralized to ensure the trustee unencumbered access to assets. Safeguarding the stability of commercial transactions, bona fide third parties are protected: obligations fulfilled to the debtor prior to the official publication of the opening notice are considered valid, provided the payor acted without actual or constructive knowledge of the bankruptcy filing.

Finally, the opening of proceedings triggers the collective satisfaction rule (par condicio creditorum), prohibiting individual enforcement actions against the debtor. This procedural stay prevents a race among creditors to seize distressed assets in the immediate pre-bankruptcy period. In furtherance of this objective, the statute provides that all separate satisfaction rights (judicial liens or attachment orders) acquired through individual enforcement or interim court measures during the 90-day preference period preceding the filing of the bankruptcy petition are extinguished ex lege. This statutory avoidance mechanism safeguards asset integrity and guarantees equitable distribution across the general body of creditors, preventing aggressive creditors from obtaining inequitable preferences.

III. Corporate Reorganization as a Rescue Mechanism

3.1. Concept and Objectives of Corporate Reorganization

Reorganization in bankruptcy proceedings represents a judicial settlement between the debtor and its creditors—a specialized judicial procedure conducted within formal bankruptcy proceedings aimed primarily at maximizing creditor recovery while preserving the debtor's business enterprise under a restructured legal framework. Reorganization emerges as an alternative, constructive method for resolving debtor distress through the implementation of a comprehensive reorganization plan. Under the Law on Bankruptcy, this mechanism transcends the traditional liquidation mandate, establishing as its core objective the continuity of enterprise operations via financial and structural repositioning. Although traditionally structured within open bankruptcy proceedings, the evolution of Macedonian bankruptcy law—allowing the submission of a reorganization plan concurrently with the initial bankruptcy petition—has transformed reorganization into a proactive vehicle for enterprise rescue. The economic rationale centers on maximizing recovery not by dismantling capital assets, but through systemic stabilization that safeguards market goodwill and socioeconomic utility.

Reorganization serves as a strategic response to structural financial distress, formalized through the reorganization plan as an operational roadmap for exiting insolvency. Unlike liquidation, this framework is designed to facilitate operational continuity by redefining managerial, debt, and equity structures. The primary duty of the corporate debtor is to present a realistic plan detailing repayment arrangements, debt haircuts, rescheduling schedules, or equity conversions, thereby rebuilding commercial reputation and restoring market credibility.

This proactive approach aligns with the fundamental policy objectives of the Law on Bankruptcy: fostering economic development and legal stability through viable rehabilitation frameworks. The statutory architecture is organized across three procedural pillars: preparation, adoption, and judicial confirmation of the plan, followed by implementation supervision. With the 45-day default rule serving as the entry requirement, reorganization functions as a multifaceted, integrated legal process that transforms insolvency law from a punitive mechanism into an economic stabilization instrument, allowing viable businesses to navigate distress and maintain their market presence.

3.2. Reorganization Versus Liquidation

The institutional choice between corporate reorganization and liquidation represents a fundamental dilemma in commercial jurisprudence. Liquidation constitutes the traditional mechanism aimed at corporate dissolution through piecemeal asset sales and proceeds distribution, permanently terminating corporate existence. In contrast, reorganization embodies a proactive rescue model wherein the enterprise preserves operational continuity under a confirmed restructuring plan, introducing restructured governance models and stabilized finances.

Reorganization is economically and socially superior to liquidation across several dimensions:

-Preservation of Going-Concern Value: It preserves the enterprise as an integrated operating entity, the going-concern value of which almost invariably exceeds the liquidation value of its fragmented physical assets.
-Protection of Human Capital: It protects organizational employment and workforce knowledge, directly mitigating socioeconomic disruption and unemployment burdens.

-Maintenance of Market Stability: It maintains established supply networks, vendor relationships, and client contracts, preventing systemic market disruptions.

-Higher Recovery Potential: While liquidation routinely yields negligible dividends to unsecured creditors following distress sales, reorganization offers long-term dividend recovery funded through future earnings and renewed operational profitability, safeguarding organizational know-how, intellectual property, and brand goodwill.

Liquidation remains legally and economically justified when an enterprise's business model is irreversibly unviable or its market positioning is terminally damaged. Under such circumstances, liquidation functions constructively by purging inefficient market actors and reallocating capital resources toward productive investments. It provides closure for creditors by converting tangible assets into cash distributions. However, liquidation remains inherently value-destructive, extinguishing cumulative historical capital investments. Consequently, reorganization stands as the more sustainable and humane legal mechanism, utilizing existing corporate infrastructure to generate renewed economic value and transforming crisis into enterprise rejuvenation.

3.3. Legal and Economic Justification of Reorganization

The legal justification for reorganization rests on its capacity to convert a distressed debtor into an economically viable entity through structured remedial interventions. Its principal objective is sustaining revenue-generating operations to create new value, directly enlarging the debtor's asset base and enabling superior creditor satisfaction relative to immediate operational termination. Moreover, reorganization is socially grounded, securing employment stability and laying a foundation for future corporate expansion.

This process is supported by operational objectives that overhaul the enterprise internally: financial consolidation, cost rationalization, corporate governance modernization, and reformed stakeholder relations. Identifying new market segments and prioritizing quality service delivery represent decisive strategic steps enabling the debtor to preserve its operational licenses and restore commercial goodwill. Reorganization is thus not a mere deferral of overdue obligations, but a systemic legal framework enhancing corporate efficiency and generating optimal outcomes for creditors, employees, and the national economy.

3.4. Safeguarding Business Continuity

Securing business continuity through reorganization is a strategic imperative to prevent disruptions in commercial supply chains that underpin macroeconomic stability. Reorganization enables the debtor to retain operating assets, brand reputation, and established supplier/customer relationships, mitigating contractual terminations. The core essence of continuity lies in preserving the company as a functioning market entity that continues performance despite immediate liquidity constraints, preventing irreversible losses of market share. Preserving operational continuity protects institutional knowledge, management expertise, and commercial partnerships. Reorganization bridges temporary distress, keeping productive infrastructure viable and preventing premature enterprise destruction.

From an economic and legal perspective, such an approach yields significantly higher added value compared to the conventional liquidation of a bankrupt debtor. While liquidation typically results in a fire-sale of assets at liquidation prices far below fair market value, a reorganization plan enables the assets to continue functioning as an integrated production or service unit (going concern). Consequently, creditors are afforded a viable opportunity to achieve a substantially higher recovery rate on their claims through the debtor's future cash flows, rather than settling for a minimal or symbolic dividend from the piecemeal sale of distressed assets.

Simultaneously, reorganization facilitates an in-depth operational and structural restructuring of the business entity. It represents far more than a passive deferral of liabilities; it is an active overhaul of the business model. This commonly encompasses: terminating unprofitable product lines or organizational units and refocusing on the core profitable enterprise; rescheduling matured debts through grace periods, debt-to-equity swaps executed by key creditors, or the partial write-off of accrued interest and principal; instituting stringent financial controls and enhancing transparency toward creditors through periodic implementation reports on the confirmed plan.

Beyond the immediate advantages for the debtor and its creditors, reorganization plays an indispensable role in safeguarding the broader macroeconomic ecosystem. The collapse of a major economic operator routinely triggers a domino effect capable of dragging dozens of smaller subcontractors, suppliers, and distributors into insolvency. By pre-empting such systemic failures, reorganization establishes itself not merely as a legal mechanism for rehabilitating an individual enterprise, but as a pillar of fiscal resilience—preserving the state's tax revenue base and sustaining ongoing contributions to social security funds.

IV. Implementation of Preventive Restructuring Mechanisms from Directive (EU) 2019/1023 into Macedonian Legislation

4.1. Deficit of Preventive Instruments in Domestic Practice: The Need for Early Warning Tools and the 'Debtor-in-Possession' Regime

In Macedonian business practice, corporate management routinely conceals operational distress until equity capital is entirely depleted, rendering subsequent reorganization legally and financially impossible. The Republic of North Macedonia currently lacks an institutionalized Early Warning framework. Directive (EU) 2019/1023 mandates that Member States ensure access to digital or administrative early alert systems (e.g., via tax authorities, credit registries, and commercial banks) that trigger timely notifications to management regarding imminent distress.

Furthermore, domestic directors persistently delay bankruptcy filings due to intense societal stigma and the statutory consequence that opening formal proceedings automatically divests management in favor of a bankruptcy trustee. The Directive addresses this structural disincentive through the "debtor-in-possession" (DIP) model, enabling incumbent management to retain day-to-day administrative control under court or practitioner oversight. This mechanism provides a decisive incentive for corporate officers to seek timely restructuring before terminal default occurs.

4.2. Reform Trajectories: The Lex Specialis Dilemma and Institutional Adaptations

Harmonizing Macedonian legislation with Directive (EU) 2019/1023 presents a fundamental policy choice regarding the optimal legislative vehicle for national implementation. Two primary reform models emerge:

-Arguments for a New, Dedicated Law (Lex Specialis): This approach is strongly supported by contemporary European legal doctrine. Enacting an independent "Law on Preventive Restructuring" would completely decouple early restructuring from traditional bankruptcy statutes. Its principal benefit lies in dismantling social and commercial stigma. When restructuring resides within a bankruptcy statute, creditors, suppliers, and market participants perceive it as de facto insolvency, causing cancellations of supply contracts, banking line closures, and stock depreciation. An autonomous statute frames restructuring as a standard corporate-financial management tool rather than the vestibule of corporate liquidation.

-Arguments for Amending the Existing Law on Bankruptcy: This model incorporates preventive restructuring chapters into the current Law on Bankruptcy. Its main advantage is leveraging existing procedural infrastructure—established legal terminology, specialized commercial judges, insolvency practitioners (who can assume the role of restructuring practitioners), and established creditor voting mechanisms. However, this approach carries the substantial risk of retaining procedural rigidity and excessive judicial formalism, conflicting with the expeditious flexibility required by the EU Directive.

To prevent legal reforms from remaining dead letter law, several practical institutional prerequisites must be implemented:

-Automated Early Warning Signals: The state must establish interconnected digital alerts across public agencies (the Public Revenue Office, the Central Register, and commercial banks) to generate automatic notifications when tax payments or credit installments fall delinquent, alerting management to take remedial measures.

-Absolute Protection for New and Interim Financing: Courts and statutory provisions must grant absolute safe-harbor immunity to fresh capital injected during preventive restructuring. Absent clear statutory guarantees insulating interim financing from subsequent avoidance actions (clawback) or subordination in later bankruptcy, commercial banks will refuse to provide liquidity to distressed entities.

-Judicial Specialization and Cross-Class Cram-Down: Preventive restructuring requires commercial and economic sophistication. Commercial court judges must be trained in financial valuations to sanction restructuring plans expeditiously and correctly apply cross-class cram-down mechanisms (imposing confirmed plans on dissenting creditor classes) without entangling procedures in protracted judicial delays.

V. Conclusion

Contemporary commercial jurisprudence and economic reality demand a decisive shift away from rigid, liquidation-centric bankruptcy regimes. The analysis presented in this paper demonstrates that corporate reorganization constitutes a demonstrably superior legal and economic mechanism for resolving corporate financial instability. Transitioning insolvency law from a punitive framework into an instrument of economic rehabilitation is central to establishing a genuine rescue culture that protects going-concern business value.

In Macedonian legislation, insolvency is objectively defined by the 45-day default threshold, distinguishing it from temporary illiquidity. This legal threshold marks the transition of distress from an internal managerial concern to a matter of public legal order, prioritizing creditor protection. Nevertheless, as this study illustrates, commencing statutory proceedings need not signal the demise of the enterprise. Unlike the destructive nature of piecemeal liquidation, reorganization safeguards employment, preserves commercial networks, and maximizes overall creditor recovery by maintaining the business as an operating unit.

Notwithstanding existing statutory frameworks, Macedonian practice suffers from acute systemic deficits. The lack of institutional Early Warning Tools and persistent bankruptcy stigma incentivize management to conceal financial distress until capital reserves are fully extinguished. Furthermore, automatic management displacement upon opening formal bankruptcy proceedings discourages timely restructuring petitions.

Accordingly, full alignment with Directive (EU) 2019/1023 is an urgent legislative imperative. Introducing the debtor-in-possession regime is essential to encourage early filings by allowing competent management to direct recovery under appropriate supervision. Concurrently, establishing digital warning indicators across tax authorities and banking institutions is vital to alert companies to imminent distress.

Regarding legislative architecture, enacting an independent lex specialis on preventive restructuring stands as the superior approach compared to piecemeal amendments to the Law on Bankruptcy. An autonomous statute would effectively remove bankruptcy stigma and establish restructuring as a standard financial rehabilitation instrument. Additionally, the legal order must provide absolute statutory safe harbors for fresh financing and enhance judicial capacity to administer cross-class cram-downs swiftly.

In conclusion, reorganization is not merely a postponement of liabilities, but a systemic legal framework restoring distressed debtors to long-term market stability. Only through authentic harmonization with European directives and modernized judicial practice can the Republic of North Macedonia build an efficient legal ecosystem that offers a genuine second chance to its corporate economy.

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