



**The Legal Uncertainty:  
Bankruptcy Proceedings and Arbitration in North Macedonia**

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# BANKRUPTCY

The Legal Uncertainty: Bankruptcy Proceedings and Arbitration in North Macedonia

Publisher: JPM | Partners

Delta House, 8a Vladimira Popovića street

[www.jpm.law](http://www.jpm.law)

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Design and prepress: JPM | Partners

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In recent years, it has become increasingly common for companies in North Macedonia to choose arbitration as the method for resolving disputes in cooperation agreements, instead of judicial proceedings, which usually take considerably longer. However, the Macedonian legislature has not fully regulated all the legal aspects related to arbitration procedures.

One key issue that remains unaddressed is the impact of an open bankruptcy proceeding against the debtor registered in North Macedonia on an ongoing arbitration process where the debtor is a respondent.

### **How Does the Macedonian Bankruptcy Law Regulate the Relationship Between Bankruptcy and Other Legal Proceedings?**

Under Macedonian Bankruptcy Law, the treatment of creditor claims is clear-cut: every claim must be registered in the bankruptcy proceedings, and the failure to do so forfeits the creditor's right to the claim.

The law further governs two options once the claim is registered:

- If the claim is part of an ongoing litigation, the litigation is stayed from the day of the opening of the bankruptcy proceedings and the creditor shall file for continuation;
- If the claim is not a part of an ongoing litigation, but the bankruptcy trustee disputes the claim, the creditor must file a lawsuit and prove the right to the claim in proceedings before the bankruptcy court.



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The unresolved question of how to treat ongoing arbitration proceedings under Macedonian bankruptcy law requires immediate attention.

Until then, stakeholders must navigate this legal uncertainty with caution, weighing their options carefully in the pursuit of justice.

However, a significant gap in the legislation emerges regarding claims involved in ongoing arbitration proceedings. While the law addresses the continuation of litigation during bankruptcy, it provides no explicit guidance on how arbitration is to be treated.

By analogy, one might argue that the creditor should be required to seek the continuation of the arbitration process in the same way they would for litigation.

However, on the other hand, the law stipulates that in order for the creditor to preserve their right to the claim, they must file a lawsuit with the bankruptcy court (unless they have previously initiated litigation, which they may continue).

### **The Need for Legal Reform: Clarifying the Intersection of Bankruptcy and Arbitration**

The absence of clear legal provisions for arbitration under the Macedonian Bankruptcy Law not only creates confusion but also highlights the challenges posed by the intersection of national insolvency frameworks and dispute resolution mechanisms. As arbitration continues to gain prominence, it is increasingly vital for lawmakers to address this gap, ensuring that creditors and debtors alike understand their rights and obligations when arbitration is pending at the time of bankruptcy.

The legislator must give careful consideration to the intentions of both parties involved in the dispute, as they have deliberately chosen the forum in which they wish their dispute to be resolved when entering into their agreement. Respecting and upholding the parties' expressed choice of authority is a fundamental principle of contract law, reflecting the core value of party autonomy in the contractual relationship.

## **Conclusion**

The unresolved question of how to treat ongoing arbitration proceedings under Macedonian bankruptcy law requires immediate attention. Clarity must be provided to prevent the erosion of creditor rights and ensure consistency in how disputes are resolved, particularly in the face of insolvency. Until then, stakeholders must navigate this legal uncertainty with caution, weighing their options carefully in the pursuit of justice.



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