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FACULTY OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW

Analyzing the Impact of Bankruptcy Provisions in the Ethiopian Commercial Code on Bank Foreclosure Practice

By

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A Thesis Submitted to the College of Law and Governance Studies of Addis Ababa University in Partial Fulfillment of the Requirements of the Degree of Masters in Business Law (LL.M)

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September, 2025

Declaration

I, Solomon Baye, hereby declare that this thesis is my original work, and has not been presented for a degree in any other institution, and to the best of my knowledge and belief all sources of materials used for the thesis have been fully acknowledged and cited.

Solomon Baye Tarekegn

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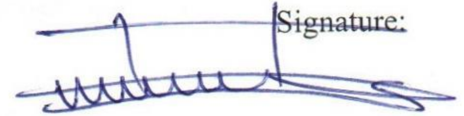

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Abstract

The 2021 Ethiopian Commercial Code introduced a modern insolvency regime that reshapes banks' enforcement rights against defaulting debtors. At their core, insolvency and foreclosure proceedings pursue at opposite goals. Unless a delicate balance is maintained, the credit market will suffer. This research examined the impact of insolvency provisions on bank foreclosure practices and asks How do the new bankruptcy provisions of the Ethiopian Commercial Code affect the rights of secured creditors—particularly banks' power-of-sale foreclosure—and what legal and practical implications follow from this reform? The research objective is to evaluate the legal and practical impact of the new insolvency framework on secured creditors' enforcement rights, and to explore ways to reconcile Ethiopia's nascent debtor-rescue regime with the longstanding creditor-friendly foreclosure system. Using a doctrinal analysis, this thesis closely examines legal texts, judicial decisions, and practical developments before and after the reform. qualitative review of recent cases where debtor companies invoked insolvency proceedings to halt bank-led collateral auctions will be discussed.

Key findings reveal a critical disconnect between the new collective insolvency procedures with pre-existing foreclosure laws, leading to ambiguity and room for strategic behavior by debtors. In practice, some debtors have misused preventive restructuring filings to paralyze foreclosure for years, exploiting procedural loopholes. This has eroded secured creditors' positions and raised concerns about credit risk and enforcement delays. The thesis argues that, without careful implementation of the laws by the courts, the laudable goal of business rescue could inadvertently undermine creditor confidence and financial stability. The study fills a critical gap in Ethiopian legal scholarship by bridging foreclosure and insolvency domains, providing timely analysis as Ethiopia transitions to a modern insolvency regime. The thesis offers important recommendations – including legislative clarifications, stronger procedural safeguards against abusive filings, and capacity-building for the judiciary – to harmonize the foreclosure and bankruptcy systems.

Key words:- Bankruptcy, Foreclosure, Insolvency, Automatic Stay.

Acronyms

APR – Absolute Priority Rule

Art. – Article

CBE – Commercial Bank of Ethiopia

COVID-19 – Coronavirus Disease 2019

DBE – Development Bank of Ethiopia

DIP – Debtor-in-Possession

ECC – Ethiopian Commercial Code

ETB – Ethiopian Birr (Ethiopian currency)

EU – European Union

FDRE – Federal Democratic Republic of Ethiopia

HUD – (United States Department of) Housing and Urban Development

IRS – Internal Revenue Service (United States)

LL.M – Master of Laws (Legum Magister)

NBE – National Bank of Ethiopia

OSCOLA – Oxford Standard for the Citation of Legal Authorities

Proc. – Proclamation

RPR – Relative Priority Rule

S.C. – Share Company

SBB – Supervision of Banking Business (NBE directive prefix)

SIPC – Securities Investor Protection Corporation (US)

SMEs – Small and Medium Enterprises

SOEs – State-Owned Enterprises

UCC – Uniform Commercial Code (United States)

UK – United Kingdom

UNCITRAL – United Nations Commission on International Trade Law

U.S. – United States

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Chapter 1

Introduction

1.1 Background of the study

Ethiopia's insolvency[1] architecture has shifted dramatically with the promulgation of the Ethiopian Commercial Code Proclamation No. 1243/2021 (hereafter called ECC). For six decades, the 1960 Commercial Code—infused with French and Italian doctrinal influences—provided a liquidation-heavy, pro-creditor framework.[2] In practice, however, the use of formal bankruptcy proceedings remained rare;[3] secured creditors, notably banks and micro-finance institutions, preferred quicker route of non-judicial foreclosure[4] under the Property Mortgaged or Pledged with Banks Proclamation No. 97/1998 (as amended by Proc. No. 216/2000)[5], Proclamation to Provide for Business Mortgage Proclamation No. 98/1998[6] and Movable Property Security Right Proclamation No.1147/2019.[7] Furthermore, Article 28 of the Micro-Financing Business Proclamation No. 626/2009 stipulates that, in matters not specifically regulated by that Proclamation, the laws governing banking business—including the aforementioned proclamations—apply mutatis mutandis to microfinance institutions.[8] As a result the new ECC has direct implications for the country's 32 commercial banks and 58 Micro-Finance institutes.[9] It should be noted, however, that insolvency and foreclosure proceedings pursue fundamentally

[1] Under the 1960 ECC, "bankruptcy" is used exclusively with "insolvency" mentioned only once—Article 542(3). Meanwhile, the English version of 2021 ECC uses the term "insolvency" to refer to the overall proceeding, and the term "bankruptcy" specifically to denote the third stage of insolvency (liquidation). Meanwhile, the Amharic version of the Code uses the word "Mekser/Kisara" to describe both. Accordingly, in this paper, I will use "insolvency" and "bankruptcy" interchangeably to refer to the overall proceeding and "bankruptcy" to refer specifically to the third stage of insolvency law.

[2] Peter Winship (ed And trans), Background Documents to the Commercial Code of Ethiopia of 1960, Faculty of Law, Haile Selassie I University (1974), 45-54.

[3] Taddese Lencho, 'Ethiopian Bankruptcy Law: A Commentary (Part I)' (2008) 22(2) *Journal of Ethiopian Law,* 57.

[4] United States Agency for International Development (USAID), Ethiopia Commercial Law and Institutional Reform and Trade Diagnostic, (2007), 56.

[5] Property Mortgaged or Pledged with Banks Proclamation No. 97/1998, *Federal Negarit Gazeta*, 4th year, No. 16

[6] Proclamation to Provide for Business Mortgage Proclamation No. 98/1998, *Federal Negarit Gazeta*, 4th year, No. 17.

[7] Movable Property Security Right Proclamation No.1147/2019, *Federal Negarit Gazeta*, No. 76

[8] "Micro Financing Business Proclamation No.626/2009, *Federal Negarit Gazeta,* 15th Year No.33, 12th May, 2009.

[9] National Bank of Ethiopia, 'About Us', http://nbe.gov.et, accessed 22 May 2025.

different objectives.[10] Without a careful balancing of these competing mechanisms, the stability and efficiency of the credit market may be undermined.[11]

The 1998 Foreclosure Proclamation carved out an expedited enforcement path: upon default and at least 30 days' notice, a lending bank could sell pledged or mortgaged property at public auction without seeking a court order.[12] This mechanism was designed because the banking sector was adversely affected by lengthy court procedures. Obtaining a judgment to authorize the sale of property mortgaged or pledged with banks—and then executing it—took a long time. Thus, the foreclosure framework sought to create a conducive environment for economic development by enabling banks to collect their debts, bypass sluggish judicial processes and unlock frozen capital.[13] Predictably, banks developed a strong institutional reliance on this path. Debtors, conversely, had little incentive to seek collective insolvency relief when the law privileged individual enforcement and stigmatized bankruptcy.

The 2021 bankruptcy reform reverses that logic. Book III of the new Code establishes a modern suite of preventive restructuring, reorganization, bankruptcy, discharge, and liability provisions. Preventive restructuring proceeding is a novel concept in the Ethiopia's insolvency regime. Central to the new insolvency landscape is the single stay of actions in preventive restructuring and general/automatic stay of individual enforcement actions in reorganization which applies mutatis mutandis in bankruptcy proceeding. The stay suspends all individual enforcement actions by all creditors, including secured in rem.[14]

This bold debtor-rescue mechanism seeks to halt the destructive "grab race," preserve going-concern value, and channel disputes into a single, transparent forum. It mirrors the

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[10] William M Tabb, 'Competing Policies in Bankruptcy: The Governmental Exception to the Automatic Stay', 21 *Tulsa Law Journal* (1985), 187.

[11] Giacomo Rodano, Nicolas Serrano-Velarde and Emanuele Tarantino, *Bankruptcy Law and Bank Financing* (Working Papers) No 1013, (2015) 5.

[12] Property Mortgaged or Pledged with Banks Proclamation No 97/1998, arts 3–4**;** see also *Hibret Bank SC v Ato Ali Abdi,* FSC Cassation Division File No 65632, Vol 12, 427.

[13] ibid, Preamble.

[14] Commercial Code of the FDRE Proclamation No 1243/2021, *Federal Negarit Gazeta, Extraordinary issue,* 12th Day Of April, 2021, arts 625 and 654.

animating principles of the UNCITRAL Legislative Guide on Insolvency Law,[15] the EU Preventive Restructuring Directive (2019/1023)[16] and the U.S. Chapter 11 model of Bankruptcy,[17] which couples a broad stay with protections for secured creditors (adequate protection, relief from stay, priming liens).[18] France's 2021 reform of its insolvency laws—a civil-law comparator—likewise embodies these international currents.[19] Ethiopia, in short, has chosen to swim with the global tide.

Yet law on the books is not law in practice. The collision point is obvious: banks announce an auction on mortgaged collateral; the debtor files (or threatens to file) for preventive restructuring/reorganization; moratorium fires; and finally, the auction grinds to a halt. Banks complain of paralysis, debtors of opaque processes; judges juggle unfamiliar doctrines; and the regulator worries about systemic credit risk. The legal system is navigating an unprecedented road, while looking back toward the old bankruptcy regime.

This research is born at that intersection. It asks how, in doctrine and in practice, the new bankruptcy regime reconfigures enforcement rights that banks assumed they possessed; it probes the treatment of secured creditors—especially banks— and whether stay durations are, in practice, being applied in active cases. In addition, it analyzes whether Ethiopian court system can handle the time bound and delicate provisions of insolvency law, including stay timelines, creditor participation rights, adequate protection during stay, and the treatment of secured creditors. Ultimately, it seeks to map a coherent path forward—one that reconciles debtor-rescue with credit market stability.

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[15] United Nations Commission on International Trade Law (UNCITRAL), Legislative Guide on Insolvency Law (United Nations 2005)

[16] Directive (EU) 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 (Directive on restructuring and insolvency) [2019] OJ L172/18.

[17] Bankruptcy Code (US) 11 USC § 361, 362, and 364.

[18] Abdata Abebe Sefara and Teshome Megarsa Ayana, 'Preventive Restructuring Procedure as an Alternative to Bankruptcy under the Revised Commercial Code of Ethiopia' (2024) *Wallaga University Journal of Law* 1; see also Taddese Lencho, 'What's New in the 2021 Commercial Code Bankruptcy Provisions' *Ethiopian Business Review* (11 October 2021) https://ethiopianbusinessreview.net/a-new-insolvency-law-for-ethiopia/, accessed 12 February 2025.

[19] Ordinance no 2021-1193 of 15 September 2021 amending Book VI of the Commercial Code (France).

1.2 Statement of the Problem

Proclamation No. 97/1998, 98/1998 and 1147/2019 gave banks a swift, largely court-free remedy to realize collateral. A creditor bank may sell mortgaged or pledged property at public auction without a prior court order. The 2021 ECC, by contrast, imposes a collective insolvency architecture with two stay tools: a court-ordered single stay of actions in preventive reorganization and non-waivable automatic general stay in reorganization and bankruptcy that halts all individual enforcement by all creditors, secured or unsecured. The legislative texts do not explicitly articulate how these regimes interlock, leaving a gray zone at their point of contact.

In practice, debtors have learned that filing preventive restructuring or reorganization can halt an imminent power-of-sale auction.[20] For more than two decades, banks have enjoyed privilege of power of sale foreclosure, and a developed case law strictly limits judicial intervention in foreclosure cases. The debtor is only allowed to ask for compensation if he proves the bank violated the auction process supported by specific evidence.[21] Ordinary courts lack jurisdiction even to entertain suits that seek to review or annul a power of sale auction.[22]

Prior to the 2021 ECC, banks also held strong bargaining power in out-of-court debt rescheduling because they could sell mortgaged property without judicial oversight. This unchecked power has been widely criticized and debtors were left at the mercy of creditor banks. Some even questions the constitutionality and legality of the Foreclosure Proclamation, arguing that it infringes the right to property, development and to be heard by an independent court of law.[23]

The new ECC, inspired on international best practices, introduces stay provisions that are widely regarded as critical to an effective bankruptcy regime. Yet the design and use of stay can also destabilize the credit market in an unprecedented way. A defaulted debtor can, in practice, buy time

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[20] 'New Commercial Code Stirs Delay Between Banks, Foreclosure' *Capital Ethiopia* (14 August 2022), https://www.capitalethiopia.com/2022/08/14/new-commercial-code-stirs-delay-between-banks-foreclosure/ accessed 18 September 2024.

[21] *Tikur Abay Construction Ltd (State-Owned Enterprise Auditor General) v Wegagen Bank,* FSC Cassation Division File No 84353, Vol 14, 149.

[22] *Abay Bank S.C v Dr. Tarko Alene,* FSC Cassation Division File No 153867, Vol 27, 291.

[23] Adamu Shiferaw Zeleke, '*The Law and Practice of Power of Sale Foreclosure in Ethiopia*' (LLM thesis, Addis Ababa University 2005) 24.

by filing for insolvency—burdening courts and eroding asset value. Ethiopia currently lacks tested procedural filters[24] (e.g., good-faith filing standards, early dismissal of abusive petitions) and robust creditor-relief tools (e.g., mandatory adequate protection and fast-track relief from stay) to counteract opportunistic behavior. While the Code empowers judges to exclude particular claims from the stay to avoid unfair prejudice, further guidance would improve predictability and creditor confidence.

Secondly, strict adherence to the duration limits of stay is essential to protect secured creditors from prolonged proceedings. Ethiopia's Federal Court Users' Satisfaction Survey reports user concerns about timeliness and repeated rescheduling. The report reveals that the satisfaction of users falls below the minimum threshold.[25] Thus, if courts approach insolvency proceedings as an ordinary court matter, the inevitable delays and repeated adjournments will extend the stay far beyond its intended limits, ultimately compromising the rights of creditors. Doubts have also been raised regarding judges' understanding of, and consistency in applying, the provisions of the Code.

Banks' business models and risk pricing hinge on enforceable collateral.[26] If stays are broad, long, and unpredictable, the expected value of security will plummet. That uncertainty will lead to tighter credit, higher interest rates, or collateral over-requirements—ironically undermining the very economic vitality insolvency reform hoped to boost. The National Bank's emergency forbearance circulars and asset-classification directives underscore the need to delicately balance regulatory flexibility and asset quality. Insolvency now adds another layer of complexity. If not properly handled, Ethiopia will endure an insolvency regime that neither saves viable firms nor preserves creditor confidence.

1.3 Literature Review

Scholarship on Ethiopian insolvency law has largely focused on the 1960 Commercial Code (ECC). This review synthesizes that literature and identifies the gap this study addresses.

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[24] In USA Courts have developed tests by relying more on precedent, legislative history, and pragmatic judicial interpretation than on the plain language of the law; see also Tabb (n 10) 187.

[25] Federal Supreme Court of Ethiopia in cooperation with USAID's Feteh (Justice) Activity in Ethiopia, Court User's Satisfaction Survey Report (2022) 35.

[26] T Zhao, 'Collateral and credit', *European Central Bank Working Paper* (2025) 23.

Taddese Lencho's two-part commentary on Book V of the 1960 ECC remains the key starting point for Ethiopian bankruptcy law. He documents the near absence of formal insolvency practice, attributing it to a culture of private receivership and to the aggressive foreclosure tools granted to banks under the 1998 proclamations. His work shows how banks avoided collective proceedings, but it predates and therefore does not engage with the 2021 ECC.[27]

Building on this observation, Tewodros Meheret offers a doctrinal appraisal of the former bankruptcy regime, criticizing its punitive ethos, liquidation bias and neglect of non-creditor constituencies. His policy critique anticipated many rescue-oriented features later adopted in 2021, but, written before the reform, it cannot assess their design or implications for secured-creditor enforcement.[28]

Other LLM theses have examined discrete regimes. Adamu Shiferaw's[29] work on power-of-sale foreclosure and Gima Dejene's research[30] on bankruptcy law clarify, respectively, the Foreclosure Proclamation and the former bankruptcy framework, but do not provide a cross-cutting analysis. This study seeks to bridge that divide.

The earliest sustained call for modernization appears in Meaza Ayalke's thesis, which compares Book V with the UNCITRAL Legislative Guide and other contemporary models. She identifies several doctrinal gaps—on commencement standards, post-commencement finance and valuation of encumbered assets—but her analysis is largely comparative and only briefly addresses Ethiopian banking practice.[31]

Tafesse Tekle's 2020 study on the treatment of secured creditors under the Ethiopian bankruptcy regime confirms ambiguities surrounding encumbered assets: Articles 781–783 appear to pull secured claims into the estate, while Article 785 suggests exclusivity. His reconciliation remains

[27] Taddese Lencho, 'Ethiopian Bankruptcy Law: A Commentary (Part I)' (2008) 22(2) *Journal of Ethiopian Law* 57; Taddese Lencho, 'Ethiopian Bankruptcy Law: A Commentary (Part II)' (2010) 24(2) *Journal of Ethiopian Law* 2.

[28] Tewodros Meheret, 'An appraisal of the Ethiopian bankruptcy regime' (2017) 50(1) *De Jure* 111.

[29] Adamu, 'The Law and Practice of Power of Sale Foreclosure in Ethiopia' (n 23).

[30] Girma Dejene Gobena, 'The Need for Modernizing the Ethiopian Bankruptcy Law: A Critical Analysis', LLM thesis, Addis Ababa University (2005).

[31] Meaza Ayalke Demessie, The Ethiopian Law of Bankruptcy: Its Shortcomings in Comparison to Modern Laws of Bankruptcy and Areas of Concern for Its Revision (LLM thesis, Addis Ababa University 2011).

speculative, given the subsequent repeal of the 1960 framework, and he does not consider how banks' statutory foreclosure powers intersect with bankruptcy.[32]

A related strand of literature examines secured-transactions reform; Asress Adimi Gikay's monograph on the 2019 Movable Property Security Rights Proclamation traces Ethiopia's adoption of a UCC-style collateral registry and self-help enforcement. He notes a latent conflict between rapid extra-judicial enforcement and the collective ethos of insolvency, but his analysis is confined to the pre-2021 framework and leaves open the impact of the new automatic stay.[33]

Taken together, these works reveal four gaps. First, none systematically addresses the interaction between the 2021 bankruptcy provisions and the foreclosure regime. Second, debates on secured-creditor primacy have not incorporated the new priority rules or the transitional clause that repeals inconsistent laws. Third, empirical analysis of post-2021 court practice is absent. Finally, there is little assessment of how the new bankruptcy provisions affect banks' risk pricing and collateral policy in an economy dominated by secured lending.

1.4 Research Questions

Primary Question

How do the bankruptcy provisions of the 2021 Ethiopian Commercial Code affect the rights of secured creditors—particularly banks' power-of-sale foreclosure—and what legal and practical implications follow from this reform?

Subsidiary Questions

1. How do the Commercial Code's stay provisions affect banks' power-of-sale foreclosure rights?
2. How have Ethiopian courts interpreted and applied the stay provisions, particularly where they may constrain banks' debt-recovery efforts?

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[32] Tafesse Tekle Sokare, 'Treatment of Secured Creditors under Ethiopian Bankruptcy Regime' (2020) 8(5) *IEEE-SEM Journal*.

[33] Asress Adimi Gikay, Ethiopian Law of Security Rights in Movable Property (2021) ch 11.

3. Do the new insolvency provisions effectively balance the power dynamics between secured creditors and debtors in insolvency and foreclosure proceedings?
4. Could implementation of the new Commercial Code shift debtors' behavior toward choosing bankruptcy over foreclosure as a means of addressing insolvency?

1.5 Objectives of the Study

1.5.1 General Objective

To critically assess the legal and practical impact of the 2021 Commercial Code's bankruptcy provisions on banks' foreclosure practices in Ethiopia and to evaluate approaches that reconcile debtor-rescue objectives with secured-creditor protections.

1.5.2 Specific Objectives

- To examine the pre-2021 and post-2021 bankruptcy regimes and to analyze the automatic stay, confidentiality rules, creditor cram-down, voting, DIP control, classification of creditors and related procedures in preventive restructuring and reorganization;
- To evaluate the impact of stay provisions of the ECC on banks' foreclosure practices;
- To Assess Ethiopia's insolvency framework against the UNCITRAL Legislative Guide, the EU Directive 2019/1023, US Chapter 11, and recent French reforms to distill best practices for balancing rescue and secured enforcement.
- To identify practical gaps in creditor protection and to propose doctrinal or procedural fixes.

1.6 Methodology of the Study

This research employs a normative-doctrinal qualitative design, supplemented by targeted empirical case analysis and comparative legal enquiry. The doctrinal spine is the insolvency provisions of Book III of the ECC (2021). It is read alongside the special enforcement proclamations that shape banks' practice– including Property Mortgaged or Pledged with Banks Proclamation No. 97/1998 (as amended by Proc. No. 216/2000), Business Mortgage Proclamation No. 98/1998 and Movable Property Security Right Proclamation No 1147/2019. These instruments constitute as the primary legal sources.

All preventive restructuring and reorganization petition filed in the Federal High Court and regional supreme court between the commencement of the ECC and research submission date in which a commercial bank appears as a secured creditor will be collected through direct requests to Banks. Each file will be analyzed for petition date, stay order, motions for relief, stay duration, disposition, and any evidence of collateral-value erosion. The assessment will be presented in case analysis part of the research. This is qualitative content analysis, not statistical proof; however, rudimentary pattern mapping (number of cases stayed, average duration, disposition) will be used illustratively.

A comparative layer benchmarks Ethiopia's framework against four international references. The UNCITRAL Legislative Guide on Insolvency Law supplies baseline objectives on adequate protection for secured creditors, and predictable relief-from-stay procedures. The EU Directive 2019/1023 and U.S. Chapter 11 adds best practices. In addition, France's Ordonnance 2021-1193, which transposed the EU Directive into a civil-law setting comparable to Ethiopia's earlier French-based 1960 code, offers an additional doctrinal analogue.

The study will complement its doctrinal and case-file analysis with semi-structured interviews. Interviewees will be selected purposively from bank attorneys who have litigated both bankruptcy and foreclosure matters. The format of the interview will be—open-ended questions within a thematic guide— which allows comparability while giving attorneys freedom to highlight unanticipated issues. Findings will be synthesized to evaluate whether Ethiopian bankruptcy and foreclosure laws, as interpreted and applied, achieve a fair equilibrium. Recommendations will be framed as doctrinal clarifications, procedural reforms, or legislative amendments.

1.7 Scope and Limitations

Scope: This research focuses on business-insolvency proceedings involving banks acting as secured creditors. It primary focused on preventive-restructuring and reorganization proceedings, as these reforms intersect directly with banks' power-of-sale enforcement under the Foreclosure Proclamation. Bankruptcy/liquidation procedure is excluded from the scope of the research because there is no reported case on liquidation proceeding post-2021 in which a bank is a participant. Incorporating microfinance institutions in this context would significantly broaden the scope and is therefore beyond the limits of this research.

Limitations:

- Sparse published case law. Very few written judgments or reported decisions are available, so the study depended largely on archival court files and interviews with insolvency practitioners;
- Most insolvency cases are still active and subject to the confidentiality rules of bankruptcy proceedings, which makes getting information on active court cases challenging. several interviewees asked that file numbers and party names to be withheld. where necessary, the research present only the relevant facts without revealing any confidential information.
- Lack of official Statistics on bankruptcy case filings are not available. There is no central database which tracks cases. To gauge the volume of cases, I contacted individual banks to confirm whether they had been involved in insolvency proceedings, but this approach cannot guarantee complete coverage.

1.8 Significance of the Study

Doctrinally, the research fills a pronounced gap in Ethiopian scholarship by analyzing—systematically for the first time—the interaction between the 2021 rescue-oriented regime and long-standing foreclosure statutes. Practically, its findings aim to reinforce two pillars of a healthy credit system: a viable business-rescue culture and robust secured-lending confidence.

1.9 Citation Style

All legal and academic references follow the Oxford University Standard for Citation of Legal Authorities (OSCOLA). Books, academic articles, proclamations and court decisions will be cited in full on first mention, then in short form thereafter. Websites, blogs, and other online sources will also be cited in accordance with OSCOLA guidelines, including the full URL and the date of access.

Chapter 2

General Overview of Bankruptcy and Foreclosure Laws in Ethiopia

2.1 Historical Development

Insolvency and debt resolution have been integral to Ethiopian legal tradition for centuries. One of the earliest legal documents that addressed such matters was *Fetha Negest* (Law of the Kings; c. 15th century). Within the *Fetha Negest*, procedures for foreclosure and insolvency are set out clearly. The text states:

If the debtor says, 'I am not able to pay the debt' the creditor may take any belonging of the debtor, pursuant to the order of the judge.[34]

Where a debtor's property proved insufficient, creditors could ask the judge to apportion whatever assets existed to satisfy the outstanding obligations. Debtors who wished to liquidate their assets themselves could petition the judge for permission to conduct the sale.[35] Despite its moral and religious underpinning, the *Fetha Negest*'s pragmatic approach to debt settlement laid the groundwork for modern debt collection procedures.

2.2 History of Modern Bankruptcy Law in Ethiopia

The first modern Ethiopian statute covering insolvency was the Bankruptcy Code of 12 July 1933.[36] Scholars disagree on whether the code was formally promulgated or remained a draft:[37] Mahteme Selassie's *Zikre Neger*—a catalogue of Imperial legislation—makes no reference to it, even though it lists many contemporaneous laws.[38] Nevertheless, the preamble of the 1960 Commercial Code expressly states that both the bankruptcy law and the company law of 12th July

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[34] Abba Paulos Tzadua (tr) and Peter L Strauss (ed), The Fetha Negest (The Law of the Kings) (Faculty of Law, Haile Sellassie I University 1968) 159.

[35] Ibid 165.

[36] Yared Kefyalew Demarso and Bogale Anja Abba, 'Bankruptcy Law of Share Companies under Ethiopian Law: Focus on Non-Financial Sectors' (2021) 12 *Beijing Law Review* 251.

[37] Peter Winship (ed and trans), Background Documents of the Ethiopian Commercial Code of 1960 (Faculty of Law, Haile Sellassie I University 1974) 15; see also N. Marein, The Ethiopian Empire Federation and Laws (1955) 193.

[38] Alemnew Gebeyehu Dessie, 'The Historical Development of Bankruptcy Law Both in the World in General and Ethiopia in Particular: In Comparison and Contrast' (2015) 4(4) *Social Sciences* 107; see also Taddese, (n 3) 61.

1933, were repealed upon adoption of the 1960 ECC, implicitly confirming that a bankruptcy statute existed at least on paper prior to 1960.

The bankruptcy provisions of the 1960 ECC drew heavily on continental sources, notably the French Bankruptcy Law of 1955 and the Italian Insolvency Act of 1942.[39] Book Five of the 1960 ECC, aimed to impose structure and uniformity on insolvency proceedings. Whereas the *Fetha Nagast* provided only moral guidance and broad principles, and the 1933 legislation added rudimentary procedural rules. the 1960 ECC consolidated and systematized these norms in a single, comprehensive instrument. Its practical impact, however, was curbed by the Derg regime's socialist policies, which limited commercial activity, outside major urban centers and an under-developed judicial infrastructure.[40] Meanwhile, the 2021 ECC introduces a brand-new, rescue-oriented modern insolvency framework, that will be examined in detail later in this research.

2.3 History of Modern Foreclosure Laws in Ethiopia

Ethiopia's foreclosure framework has evolved over the past century. The earliest statute, the 1924/25 "Law of Loans," allowed a lender to seize or sell pledged property only at maturity and with the borrower's express consent—otherwise a court order was required.[41] After the Civil and Commercial Codes were promulgated in 1960, the law of security interests became dispersed; the Civil Code governed real-property mortgages, antichresis, and possessory pledges, while the Commercial Code regulated business mortgages and pledges of transferable securities.[42]

For pledges, Article 2851 barred any clause that automatically transferred ownership to the creditor upon default; while Articles 2853–2854 introduced a notice-and-auction procedure that permitted sale after eight days if no valid objection was raised. Mortgages were likewise court-centered:

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[39] Ibid, Tadesse (n 3) 61.

[40] Meaza, The Ethiopian Law of Bankruptcy: Its Shortcomings in Comparison to Modern Laws of Bankruptcy and Areas of Concern for Its Revision (n 31) 1.

[41] Adamu, (n 23) 2-3.

[42] Asress, (n 33) 26; see also, ECC Article 2287(1) and Title XVIII Chapter 4 Articles 3041 -3130 for Mortgages, Antichresis, Articles 2825 – 2874 for pledge, and Articles 171- 193 for business mortgage.

Article 3060 restricted extra-judicial disposition, so foreclosure remained largely a judicial-sale process.[43]

As banks struggled with congested court calendars, legislators sought faster remedies. Proclamation No. 65/1997[44] first carved bank collateral out of the Civil Code's stricter constraints, authorizing auction after thirty days' notice; the measure proved ineffective because many existing security contracts lacked enabling clauses and possession rules were unclear. One year later, Proclamation No. 97/1998 replaced it and created a workable system: a registrar to record security interests and supervise auctions, enlist police assistance; express advance consent clauses for out-of-court sale; a statutory power of sale even absent such consent; and a right for banks, after two failed auctions, to appropriate the asset at the reserve price. Proclamation 97/1998 was later amended by proclamation 218/2000.

The same year, Proclamation No. 98/1998 extended the extra-judicial model to business mortgages. The preambles of these instruments emphasized that —court foreclosure took too long, harming intermediated savings and credit—so the law pivoted for banks from mandatory judicial sales to defined notice-and-auction rules outside court. Crucially, the scope was narrow: the power of sale was conferred only on banks. while other creditors, such as small enterprise lenders and non-bank financial institutions, remained on the traditional, court-led track.[45]

2.4 The constitutionality and legality of foreclosure proclamations

The constitutionality and legality of the foreclosure proclamations remain contested. Critics argue that the measures privilege banks while sidelining other lenders and, more importantly, debtors. They contend that allowing banks to auction—or, after two failed auctions, purchase—the mortgaged property without the borrower's consent or a court order amounts to unequal treatment: other creditors must still endure full litigation and obtain judgment before enforcing their security. The laws are said to violate Article 40(1) (property rights) and Article 43 (right to development) and Article 79(1) (judicial power) of the FDRE Constitution. Legal practitioners have

[43] Adamu, (n 23) 3.

[44] Civil Code (Amendment) Proclamation No 65/1997, Arts 2(1), *Federal Negarit Gazeta*, No 23.

[45] Adamu, (n 23) 3.

consequently filed foreclosure-related cases before the House of Federation, seeking authoritative constitutional interpretation.

On the other side, proponents responded by saying that the streamlined process simply achieves, without additional burdens, the same ends as judicial foreclosure; because borrowers voluntarily grant the power of sale in mortgage contracts, they are bound by that agreement. Supporters further maintain that the proclamations balance bank stability, systemic-risk concerns, and individual rights without depriving owners of a final judicial remedy, thereby infringing neither access to justice nor property rights. [46]

If a non-bank creditor has already triggered a court-supervised sale, a bank's remedy is not to halt the process but to assert priority over the proceeds. Federal Supreme Court cassation jurisprudence—often discussed under Article 418 of the Civil Procedure Code—has emphasized, a bank cannot demand suspension of a court-led sale merely because it holds a higher-ranking security; [47] it must take its priority in cash once the hammer falls. The power of sale foreclosure is not absolute; a court may issue an injunction suspending auction proceedings when the mortgagor or pledgor applies and meets the statutory criteria.[48]

2.5 Treatment of Secured Creditors in the 1960 and 2021 Ethiopian Commercial Code

The treatment of secured creditors is a critical element of insolvency law, requiring a careful balance between individual enforcement rights and the collective interests of all creditors.[49] Under the 1960 ECC, secured creditors were largely unaffected by bankruptcy proceedings. Article 1026 stated that the declaration of bankruptcy *"shall have no effect on the rights of secured creditors,"* thereby effectively exempting secured claims from the general stay. As Tadesse Lencho notes in his commentary, *"mortgagees are largely unaffected by bankruptcy… [they] can pursue their*

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[46] Birhanu Beyene Birhanu, The Constitutionality of Proc 97/98 (2024) 3-8; DOI:10.13140/RG.2.2.33091.58403

[47] *Development Bank of Ethiopia v Commercial Bank of Ethiopia*, FSC Cassation Division File No 25863, Vol 7, 38; *Heirs and Wife of Ato Nasir Abajafir Abajifar v Commercial Bank of Ethiopia*, FSC Cassation Division File No 68708, Vol 13, 464.

[48] Civil Procedure Code of Ethiopia, Arts 154 and 155, *Negarit Gazeta*, Extraordinary Issue No 3 of 1965; see also *Tadesse Alemseged v Buna International Bank S.C*, FSC Cassation Division File No 211694, (unpublished).

[49] The World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes (revised 2021) 23.

rights over their collaterals untroubled by bankruptcy proceedings."[50] This approach allowed secured creditors to call the shots: they could attach and sell collateral as if no collective proceeding existed, while unsecured creditors were stayed.

The 2021 ECC fundamentally shifts the treatment of secured creditors by introducing a broad single or automatic stay that also binds secured creditors. Once insolvency proceedings open, all creditors are barred from enforcing their claims by operation of law, without need for a court order—except preventive restructuring proceeding, where a debtor must petition for a single stay. Article 654(1) makes this explicit for the reorganization observation period: *"all individual enforcement actions by all creditors, including secured in rem by pledges, mortgages or otherwise, ... shall, as a matter of law, be automatically stayed."* The same automatic stay applies to bankruptcy proceeding as well.[51] Secured creditors can therefore no longer proceed unilaterally to foreclose or attach assets once bankruptcy is declared—an emphatic departure from the 1960 regime.

2.6 Out-of-Court Debt Restructuring in Ethiopian Commercial Banks

Many legal systems allow a debtor to restructure its obligations through negotiated arrangements with creditors, and banks commonly employ various techniques to reorganize debts outside formal bankruptcy proceedings.[52] Out-of-court restructuring is ordinarily facilitated by workout agreements and supervised under banking business directives.[53] Black's law dictionary defines workouts as:

'An out-of-court negotiation with creditors whereby a debtor enters into an agreement with a creditor or creditors for payment of plan to discharge the debtor's debt.'[54]

In order to achieve working loan workout practice, non-binding principles and guidelines have emerged. They encourage banks to maintain support for debtors while information is gathered and

[50] Tadesse, (n 27) 54.

[51] Art 761.

[52] Melvin G Shimm, 'The Impact of State Law on Bankruptcy' (1971) *Duke Law Journal* 881.

[53] The World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes (n 49) 6.

[54] Bryan A Garner (ed), Black's Law Dictionary (7th edn, West Publishing 1999).

shared.[55] Workouts offer several advantages over formal bankruptcy. They are more cost—effective, fast, flexible and preserve valuable business relationships with customers. Workouts allow the parties to negotiate directly and settle the debt efficiently without court delays or public exposure.[56] However, where one or more creditors refuse to agree to the settlement the entire restructuring process could be derailed and ultimately leads to formal insolvency. Despite the risk, the benefits of workouts outweigh their disadvantages when all parties negotiate in good faith.[57]

The ECC bankruptcy provisions contains no explicit provisions on loan workouts, Whereas US bankruptcy law supports such arrangements —both through case law and through 11 USC § 305(a)(1), which permits a court to dismiss a petition if an effective workout better serves the interests of debtors and creditors.[58]

In Ethiopia, NBE regulates loan workouts by setting detailed rules through its Asset Classification and Provisioning Directives. The recently issued Directive No. SBB/90/2024, repeals and replaces Directive No SBB/69/2018. Under Directive No. SBB/90/a borrower that has sought, or has been placed under, bankruptcy protection in order to avoid or delay repayment is classified as being in default.[59] The directive adopts a detailed, and structured framework for classifying exposures, segmenting them into distinct categories—Pass, Special Mention, Sub-standard, Doubtful, and Loss.[60] The directive limits the maximum number of restructuring iterations to three for short and

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[55] UNCITRAL, (n 15) 26; see also Pen Kent, 'The London Approach' (1993) *Bank of England Quarterly Bulletin* Q1, 110.

[56] Jose M Garrido, Out-of-Court Debt Restructuring (World Bank 2012) 27. http://documents.worldbank.org/curated/en/417551468159322109

[57] Asress Gikay, The Role of Workouts under the US and the Ethiopian Bankruptcy Law: A Comparative Analysis (LLM thesis, Central European University 2011) 15–19.

[58]ibid, 26; see also Norman L Pernick and G David Dean, 'Structured Chapter 11 Dismissals: A Viable and Growing Alternative after Asset Sales' (2013) *American Bankruptcy Institute Journal*.

[59] National Bank of Ethiopia (NBE), Directive No SBB/90/2024, Arts 2.11.7 and 2.11.8.

[60] Ibid, Art 6; Under this framework, "Pass" refers to exposures that continue to perform without any significant increase in credit risk, "Special Mention" for exposures that are 30 days or more but less than 90 days past due, "Sub-standard" for those that are 90 to less than 180 days past due, "Doubtful" for exposures overdue from 180 to less than 360 days, and "Loss" for exposures that are 360 days or more in default. Additionally, the directive introduces an "unlikely to pay" category that mandates any exposure, which is deemed unlikely to be repaid regardless of the number of days past due, to be treated as non-performing.

medium-term loans (down from five previously) and four for long-term loans (down from six previously). This change is designed to prevent the practice of ever-greening—where banks repeatedly restructure loans to delay recognizing them as non-performing.[61]

The Federal Supreme Court Cassation Bench has clarified that out-of-court loan rescheduling becomes legally binding only when embodied in a duly signed repayment agreement. Informal exchanges—such as letters, e-mails, or other managerial concessions do not alter the original schedule or restrict the creditor's statutory right to sell the attached property.[62]

2.7 Regulatory Forbearance in Times of Crisis—COVID-19, Civil Unrest, and the National Bank of Ethiopia's Workout Mandates

Large-scale crises such as the COVID-19 pandemic and internal armed conflict have severely affected otherwise viable firms.[63] Economic shocks caused by pandemics and by armed conflict forced many countries to temporarily relax their insolvency rules. Many countries responded by temporarily relaxing insolvency and credit rules, for example by imposing moratoria on creditor petitions, raising minimum debt thresholds for filings, or easing restrictions on shareholder loans.[64] India adopted one of the most far-reaching measures, suspending most new insolvency filings for up to a year, a step critics warned would merely delay a "wave of bankruptcies." [65]

Following this international trend, the NBE issued Circular No. BSD/22/2023 on 16 June 2023, introducing targeted regulatory forbearance to support loan recovery and post-conflict

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[61] https://nbe.gov.et/nbe_news/the-national-bank-of-ethiopia-introduces-strong-reform-measures-to-strengthen-the-framework-for-financial-sector-oversight/ accessed on January 23, 2025.

[62] *Bargoba Trading P.L.C v Commercial Bank of Ethiopia*, FSC cassation division File No 227301, (unpublished).

[63] Bo Becker and Martin Oehmke, 'Restructuring and Insolvency – Opportunities for Reform in Europe' (ASC Insight No 4, European Systemic Risk Board, May 2025) 3–4.

[64] Ekaterina Sapozhnikova, 'Legal Aspects of the Moratorium on Bankruptcy as an Innovative Trend in Business Support in a Pandemic' (2020) 3.

[65] Ibid; Section 10A was inserted by the promulgation of the Insolvency and Bankruptcy Code (Amendment) Ordinance 2020 on 5 June 2020. It prohibits the filing of applications under sections 7, 9 and 10 (i.e., by financial creditors, operational creditors and corporate debtors respectively) for initiation of corporate insolvency resolution process ("CIRP") in respect of defaults arising from and including 25 March 2020 for a period of six months, not exceeding 1 year.

reconstruction in Tigray, Amhara and Afar.[66] The circular temporarily relaxes provisions of the Asset Classification and Provisioning Directives (SBB/69/2018 and SBB/52/2012), giving banks greater flexibility to renegotiate distressed loans through refinancing, rescheduling or new credit to borrowers whose operations or revenues were disrupted. Among other concessions, it lifts caps on the number of restructurings, allows new loans against provisional financial statements and prevents automatic downgrade to non-accrual status while a workout is in progress.

Banks are nonetheless required to undertake case-by-case assessments of borrowers before granting relief, and to report regularly on implementation. The forbearance measures apply for one and a half years, from 16 June 2023 to 16 December 2024. [67] Additional NBE circulars have similarly aimed to mitigate insolvency risks arising from COVID-19 by facilitating loan restructuring.[68]

Despite these tools, many businesses have not resumed repayment, and banks have increasingly reverted to power-of-sale foreclosure to recover debts.[69] The tension between temporary regulatory relief and long-standing foreclosure statutes therefore remains a live policy challenge in Ethiopia's post-crisis credit market.

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[66] National Bank of Ethiopia, Circular No BSD/22/2023, Ref No FIS/BSD/1021/23 (16 June 2023).

[67] Businesses and traders in the Tigray Regional State have been granted a one-year extension on loan repayments totaling 86 billion Br, starting from December 16 2024, offering temporary relief; [67] Addis Fortune, *(Published on Feb 02,2025; VOL 25 , NO 1292)* https://addisfortune.news/central-bank-extends-loan-repayment-period-for-tigray-businesses/ accessed 1 April 2025.

[68] National Bank of Ethiopia, Circular No MFISD/01/2020, Ref No V/GOV/006/2020 (1 June 2020).

[69] Addis Fortune, 'Tourism Collapse Triggers Foreclosure Threats in Sacred Town' (*Published on Jul 27,2025; VOL 26 , NO 1317),* https://addisfortune.news/tourism-collapse-triggers-foreclosure-threats-in-sacred-town/ accessed 29 July 2025.

Chapter Three

Insolvency Proceedings under Book III of the Ethiopian Commercial Code (Proclamation No. 1243/2021)

3.1 Introduction to Book III

3.1.1 Background and Rationale

The 2021 reform of ECC introduced a modern insolvency regime that replaces the outdated 1960 Code. The new framework shifts the focus from liquidation heavy proceeding towards business rescue model, aligning Ethiopian law with contemporary international best practices and policy objectives.[70] Designed to foster economic stability and improve the country's ease-of-doing-business standing, the ECC adopts a debtor-rescue orientation.[71] Ethiopia's position on the World Bank's resolving-insolvency ranking was 149th in 2020 assessments. [72]

An effective insolvency system should aim to: - provide timely, efficient, and impartial resolution; prevent abuse; apply transparent, predictable risk-allocation rules; incentives for gathering and dispensing information; recognize existing creditor rights and respect the priority of claims with a predictable and established process.[73]

Likewise, The overarching objectives of Ethiopian insolvency proceedings is to promote economic stability, maximize the value of the debtor's estate, and ensure transparent, efficient and timely insolvency procedures.[74] In particular, preventive restructuring aims to enable viable but financially troubled debtors to contractually restructure their debts at an early stage by unanimous

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[70] Federal Democratic Republic of Ethiopia, 'Memorandum of Economic and Financial Policies' (Addis Ababa, 10 July 2024) para 53; see also Federal Democratic Republic of Ethiopia, Homegrown Economic Reform 2.0: 2023/24 – 2025/26 Ethiopian Fiscal Years (Addis Ababa 2023) 16.

[71] Tadesse Lecncho, What's new in the 2021 Commercial Code Bankruptcy provisions, Ethiopian Business Review, https://ethiopianbusinessreview.net/a-new-insolvency-law-for ethiopia/#:~:text=The%20new%20insolvency%20law%20affords,their%20normal%20course%20of%20business. Accessed on February 12, 2025.

[72] World Bank Group, *Doing Business Economic Profile: Ethiopia* (2020) 57. https://archive.doingbusiness.org/en/rankings accessed 15 June 2025. The World Bank discontinued the Doing Business report on September 16, 2021 (after data irregularities were identified).

[73] The World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes, (2021) 21.

[74] Art. 588(1)

agreement of affected creditors[75]; reorganization proceedings seek to restructure a debtor's debts and operations (or facilitate a going-concern sale) with the consent of a qualified majority of creditors[76]; and bankruptcy proceedings provide for efficient liquidation (piecemeal or going-concern sale) to maximize asset value for creditors, while affording honest debtors a fresh start and sanctioning misconduct.[77]

3.1.2 Structure of Insolvency Law in Book III

Book III of the ECC is divided into seven titles. Title I lay down general provisions (objectives, scope, definitions and insolvency actors). Title II creates the new preventive restructuring procedure, and Title III regulates reorganization proceedings, which replace the former scheme of arrangement. Title IV governs bankruptcy (liquidation).

Title V deals with discharge of debts (the "fresh start" after bankruptcy), Title VI with civil and criminal liability and director disqualification, and Title VII with a simplified bankruptcy procedure for SMEs. This chapter concentrates on preventive restructuring and reorganization, where secured-credit enforcement and collective rescue most clearly intersect.

3.1.3 Scope of Application and Jurisdiction

Ethiopian Insolvency proceedings apply broadly to business debtors. Non-merchants (consumers) remain outside the scope of these proceedings, preserving the Commercial Code's traditional focus on business insolvency.[78] In contrast, American, UK and EU laws provide consumer-bankruptcy options that allow individuals to seek protection from their creditors.[79] The ECC specifies that traders and business organizations (except informal joint ventures), as well as individual artisans and professionals, are subject to insolvency proceedings.[80] Banks and other financial

[75] Art. 588(2)

[76] Art. 588(3)

[77] Art. 588(4)

[78] Samuel M. Biresaw, Consumer debt issues Ethiopia, INSOL International, (2025), 6.

[79] Dagnaw Getahun, Individual Bankruptcy law for Ethiopia: Lessons from United States and Germany, Central European University, (2014) 44; see also Johanna Niemi, Iain Ramsay and William C Whitford, Consumer Credit, Debt and Bankruptcy: Comparative and International Perspectives (2009) 225.

[80] Art. 589(1)

institutions are also covered, but “without prejudice to special laws”—meaning banking-sector insolvencies may follow these procedures unless overridden by sector-specific regulations. [81]

Likewise, State-Owned Enterprises (SOEs) fall under Book III unless special insolvency regimes for SOEs are issued. The law anticipates that special insolvency rules may be enacted for certain industries or business types, but in general the Commercial Code’s insolvency framework is the default for most commercial debtors.[82] The competent court to entertain bankruptcy cases is the Federal High Court in the jurisdiction where the debtor’s principal place of business or registered office is located.[83] State Supreme Courts are powered to entertain bankruptcy cases by delegation.[84]

3.2 Preventive Restructuring Proceedings

3.2.1 Concept and Key Features:

Preventive restructuring (Title II of Book III) is an entirely new addition to Ethiopian insolvency law. It is designed as a voluntary, court-assisted workout to rescue businesses before they become formally insolvent[85] and not yet in full cessation of payments (or has been in cessation for no more than 45 days).[86] According to European Commission’s Frameworks Recommendation, the proceedings shall contain six functions, which are: early warning, debtor in-possession, minimum court involvement, stay, cross-class cramdown, and refinancing—all of which the ECC incorporates.[87]

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[81] Art. 589(2)

[82] Art. 589 (3-4)

[83] Art. 600/1, See also Article 5/d of Federal Courts proclamation No 1234/2021 which states that the federal courts have jurisdiction over bankruptcy cases. Before the promulgation of these legislations the federal first instance court used to try bankruptcy cases.

[84] The Federal Democratic Republic of Ethiopia Constitution (1995), Art 78(2) and 80(2) delegates the jurisdiction of the Federal High Court and Federal First-Instance Courts to State courts and vesting the State Supreme Court with the jurisdiction of the Federal High Court.

[85] Jennifer Gant, Gert-Jan Boon, David Ehmke, Emilie Ghio, Line Langkjaer, Eugenio Vaccari and Paul Omar, The EU Preventive Restructuring Framework: in Extra Time? (2022) 4.

[86] Art. 617(1)

[87] European Commission, Recommendation of 12 March 2014 on a new approach to business failure and insolvency, (2014).

3.2.2 Confidentiality

Confidentiality is a defining feature of preventive restructuring.[88] Under the U.S. Bankruptcy Code, 11 USC § 107(a) makes bankruptcy papers public, while subsections § 107(b)–(c) permits sealing to protect trade secrets, confidential commercial information, scandalous or defamatory matter, and certain personal identifiers when disclosure would create an undue risk of identity theft or other harm.[89] The US Federal Rule of Bankruptcy Procedure 9037 obliges parties to redact sensitive personal identifiers from every filing and sets out a process for late redactions if something slips through.[90] By contrast, Ethiopia's 1960 Code stigmatized bankruptcy and deterred filings; companies often avoided the procedure to protect their reputations.[91]

The new ECC includes provisions that protect the debtors from uncertain timidness. Article 623 states that, both the application and the subsequent court hearings are kept *in camera*, and information about the process is not publicly disclosed. The principle intended to prevent panic among other creditors; civil and criminal penalties apply to breaches.[92]

3.2.3 Tension between confidentiality and creditors' rights

Article 623 of the ECC had bring considerable uncertainty in practice. several legal practitioners report that courts barred secured creditors whose collateral is at stake from attending hearings, and have rejected their written objections on the ground that "all sessions are confidential."[93] That restrictive reading conflicts with Article 598, which guarantees every creditor the right to be heard, and Article 599, which entitles creditors to information. The Federal Supreme Court Cassation Division has addressed the conflict.[94] As indicated in the Tewolde Giday Electric Cable & Wire Co. court files, the Federal High Court had opened the preventive-restructuring proceeding wholly

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[88] Kurtzman, Eric; Maizel, Samuel R., Challenges in Protecting Confidential Data in Bankruptcy, American Bankruptcy Institute Journal; Alexandria Vol. 40, (2021) 60.

[89] Ibid. see also UNCITRAL, (n 15) paras 28, 52 and 115.

[90] https://www.law.cornell.edu/rules/frbp/rule_9037?utm_source Cornel Law School, Legal information Institute, Rule 9037. Protecting Privacy for Filings; Federal Rules of Bankruptcy Procedure, accessed April 22, 2025.

[91] Tadesse (n 27) 20-21; see also Peter Winship, (n 2) 103.

[92] Art. 623

[93] Interview with Henok Kebebe, Attorney at CBE, April 8, 2025.

[94] Tewolde Giday Electric Cable & Wire Co v. Commercial Bank of Ethiopia, FSC Cassation Bench File No. 262505 (unpublished).

in camera and refused to let the secured creditor (CBE) from comment. The Federal Supreme court and Cassation Bench reversed the Federal High Court's decision saying: -

confidentiality under Article 623 "protects the process from public disclosure," but it does not override creditors' statutory rights in Book III: Article 598 entitles "creditors to present their opinions and be heard at court hearings," and Article 597(1) obliges courts to protect creditors' legitimate interests.[95]

3.2.4 Involvement and Protection of Creditors in the Preventive Restructuring

3.2.4.1 Stay of Enforcement Actions

A key element of preventive restructuring is the breathing-space it affords the debtor from individual enforcement actions. The EU Directive on preventive restructuring requires that debtors should be able to benefit from a temporary stay of individual enforcement actions to facilitate negotiations.[96] The initial stay duration may not exceed four months, with possible extensions up to a total of twelve months (including extensions and renewals) to prevent abuse of prolonged moratoria.[97] Member States have some leeway regarding the stay—they may adopt a general stay binding all creditors or a limited stay aimed at particular creditors, and they may choose between a stay that takes effect automatically or one imposed by court or administrative authority.[98] The directive's approach is intended to strike a fair balance between the interests of the debtor and those of secured creditors.[99]

The ECC adopts a "single stay of actions" granted only with court approval. Article 625(2) defines a single stay as *"a temporary suspension on the enforcement of a claim by a single creditor against a debtor or a third-party security provider; including secured and preferential claims."*

The code imposes a strict deadline by which the debtor and participating creditors must complete and file a restructuring plan within four months of the opening of the proceeding.[100] An extension

[95] Ibid

[96] Directive 2019/1023, Art. 6.

[97] Directive 2019/1023, Art. 8.

[98] Émilie Ghio, 'Transposing the preventive restructuring directive 2019 into French insolvency law: rethinking the role of the judge and rebalancing creditors' rights', International *Insolvency Review* 1 (2020) 10.

[99] Ibid

[100] Art. 618(1)

of up to four additional months is permitted only in exceptional circumstances and if a unanimous agreement is likely with more time. In any event, the total duration may not exceed eight months.[101] Thus, a debtor in preventive restructuring must either secure *voluntary* consent from key creditors or risk renewed enforcement by any creditor that is not on board. The total duration of a single stay cannot outlast the preventive restructuring proceedings itself.[102]

During the process, the debtor must continue paying all ordinary ongoing obligations—wages, taxes and new supplies—except to the extent a court has stayed a specific claim. If the debtor foresees that it cannot meet current expenses that deterioration triggers exit from preventive restructuring: the debtor must promptly file for reorganization and, in the case of cessation of payments, for bankruptcy.[103] This mechanism encourages honest and early use of the procedure, and prevents insolvent debtors from lingering without paying their way.

3.2.4.2 Creditor Cross-Class Cram-Down and Voting

Ethiopia's preventive restructuring procedure is designed as a fully consensual workout. only the debtor may apply for preventive restructuring, as it is a voluntary rescue mechanism.[104] The purpose is to allow the debtor to confidentially negotiate a restructuring plan with its main creditors and to reach a contractual settlement that resolves its difficulties without the publicity and stigma of formal bankruptcy.[105] Because the mechanism is consensual, creditor participation is entirely voluntary and no creditor can be forced to accept a deal in this framework; unanimous consent of all affected creditors is required for a plan to proceed to approval. [106] Thus, in practice, any single dissenting creditor can veto the plan.

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[101] Art. 618(2)

[102] Art. 625(3)

[103] Indicators of a debtor's general cessation of payments may include its failure to pay rent, taxes, salaries, employee benefits, trade accounts payable and other essential business costs. UNCITRAL Legislative Guide (2005): Part One and Two, para 23. See also Art. 626

[104] Article 4(8), EU PRD. Under the current French regime, preventive procedures are opened at the request of the Debtor.

[105] Jessica Schmidt, Preventive restructuring frameworks: Jurisdiction, recognition and applicable law, International Insolvency Review, INSOL International (2022) 3; see also Article 23 of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks.

[106] Art 627(2)

The upside is that any confirmed plan represents a true agreement of the parties, making a a cram-down mechanism unnecessary. The downside is that unanimity can be difficult if creditors' interests diverge, giving a single creditor leverage to block an otherwise beneficial deal. If unanimous consent cannot be reached under the preventive framework, the debtor's recourse is to convert to a formal reorganization proceeding, where only a qualified majority is required.

Notably, the 2021 ECC provisions largely reflect the US-style absolute priority rule (APR) ethos rather than EU's newer relative priority rule (RPR), which the directive permits as an alternative.[107] Thus, as per article 627/2 of the ECC all affected creditors have a right to vote on the adoption of a restructuring plan, whereas creditors not affected by the plan should not vote on it. The French Commercial Code explicitly excluded unaffected creditors, beneficiaries of a trust, social and tax authorities from voting on the plan.[108]

3.2.4.3 Debtor-in-Possession and Financing in Preventive Restructuring Proceedings.

The debtor-in-possession (DIP) status in preventive restructuring allows the debtor to remain in possession of its property and to take all decisions within the ordinary course of business.[109] At the same time, the Code recognizes that rescue almost always requires fresh money. It therefore establishes a statutory safe harbor and priority regime for "new financing" aligned with best practices reflected in the UNCITRAL Legislative Guide, the EU Preventive Restructuring Directive, and US Chapter 11. The US system is the archetype for robust DIP financing. Courts routinely approve super priority loans, priming liens, and roll-ups of prepetition debt—often within days of filing.[110] Academic literature shows both sides: DIP loans can discipline managers and speed resolution, but they can also entrench incumbent secured lenders and shift control via coercive covenants.[111]

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[107] Giulia Ballerini, *'The priorities dilemma in the EU preventive restructuring directive: absolute or relative priority rule?'* International Insolvency Review 1 (2020) 2; see also Stephan Madaus, *Is the Relative Priority Rule right for your jurisdiction? A simple guide to RPR* (WP 2020-1, 18 January 2020) 1.

[108] Ghio, (n 98) 11.

[109] Art 624.

[110] Douglas G Baird and Robert K Rasmussen, 'The End of Bankruptcy' (2002) 55 Stanford Law Review 751; 11 USC §364.

[111] George G Triantis, 'A Theory of the Regulation of Debtor-in-Possession Financing' (1993) Vol. 46:901 Vanderbilt Law Review 904; David A Skeel Jr, 'The Past, Present and Future of Debtor-in-Possession Financing' (2004) Vol.25 Cardozo Law Review 1905; Sandeep Dahiya and others, 'Debtor-in-Possession Financing and Bankruptcy Resolution:

Outside the insolvency statute, prudential banking rules—especially Ethiopia's 2024 Asset Classification & Provisioning Directive—may unintentionally affect refinancing and DIP lending. Ethiopia currently lacks regulations governing risk-sharing in credit and underwriting syndicates, even though banks occasionally attempt to syndicate loans.[112] The Ethiopian Financial Services Code, expected to formalize syndicated lending, could counterbalance that chilling effect by making collective rescue finance administratively feasible.

In a DIP scenario, the debtor retains possession, drafts the plan (often with help from the expert), and creditors propose modifications or counter-proposals.[113] To incentivize creditor cooperation, the Code allows flexible plan content and grants special protections for providers of fresh financing. Where new money is needed to keep the business running or to implement the workout, the plan may include new-financing arrangements. Lenders who provide DIP financing under a court-approved plan receive legal safeguards. The plan protects such lenders from later claims that their loan was a fraudulent conveyance or otherwise wrongful,[114]and if the debtor later enters bankruptcy, those new loans will enjoy priority over unsecured pre-existing debts.[115] This encourages creditors (or even new investors) to inject funds that can rescue the company, by assuring them that they won't be subordinated or penalized for helping. Additionally, any security granted to secure the new financing may be made effective and will be respected in later proceedings[116], and the court will publicize the amount of new financing accorded priority in case of future bankruptcy. [117]

Empirical Evidence' (2003) 69 Journal of Financial Economics 259; George G Triantis, 'Debtor-in-Possession Financing in Bankruptcy' in Barry E Adler (ed), Research Handbook on Corporate Bankruptcy Law (Edward Elgar 2020) 187.

[112] Solomon Abay Yimer, Financial Market Development, Policy and Regulation: The International Experience and Ethiopia's Need for Further Reform (PhD thesis, University of Amsterdam 2011) 70.

[113] Art. 627(1)

[114] Art. 628(2)

[115] Art. 628(3)

[116] Art. 629(2)(a)

[117] These are precisely the protections advocated in UNCITRAL Recommendations 63–68 (priority, liens, and immunity from avoidance) and mandated by Article 17 of the EU Directive 2019/1023 (protection of new and interim financing). The US analog is 11 USC §364, which authorizes super priority claims and "priming" liens when necessary, provided adequate protection is given to displaced secured creditors. Ethiopia does not (yet) provide a

If the court rejects the plan, the debtor has a right to appeal that refusal within 10 days.[118] Third parties aggrieved by the grant of a new financing privilege (for example, a competitor or a creditor who did not participate) may file an opposition within 20 days of the plan's publication, contesting the privileged status of the new financing.[119]

3.3 Reorganization Proceedings Under the 2021 Ethiopian Commercial Code

Upon receiving a reorganization petition, the court will hold an opening hearing (which may follow an examiner's report) to decide whether to open reorganization. If granted, the opening judgment immediately commences an observation period—which triggers several immediate consequences: a formal observation period begins, a supervisory judge and a supervisor are appointed, a general stay of creditor actions comes into effect, and the debtor is placed under court supervision while generally remaining in possession. The opening judgment will also fix the date of cessation of payments to mark the suspect period's start for avoiding prior transactions.[120] The reorganization regime, thus, involves a significant degree of court control from the outset, balanced by the goal of allowing the business to keep operating and eventually emerge if possible. Reorganization may be initiated by the debtor, creditors, or the public prosecutor and the court can ultimately bind dissenting creditors through plan confirmation.[121] The following sub-sections examine the reorganization provisions, focusing on their impact on secured creditors—especially banks.

3.3.1 From Scheme of Arrangement to Reorganization

Under the 1960 ECC, the "scheme of arrangement" operated as a court-sanctioned composition with rigid payout floors for unsecured claims—at least 50% within one year, 75% within 18 months, or 100% within three years—typically backed by guarantees; secured creditors could not vote unless they surrendered their security, and approval required a two-thirds majority in value of all non-preferred unsecured debt.[122]

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granular taxonomy like §364(a)–(d), but the effect—priority plus an avoidance shield—is functionally similar; See also Art. 629(4)

[118] Art. 630

[119] Art. 631

[120] Arts. 591, 706(d)

[121] Art 635

[122] Art 1121(1) of the 1960 ECC.

By contrast, the 2021 ECC framework adopts a flexible restructuring plan that can modify the debtor's capital structure, operations, or business organization to restore viability. The new Code explicitly allows diverse plan measures – rescheduling or waiving debts, converting debt to equity or other instruments, altering corporate governance, selling assets or even the entire business as a going-concern. This flexibility is a major innovation, replacing the old "one-size-fits-all" payout scheme with tailored solutions for turnaround. It aligns with the UNCITRAL Guide's call for a "flexible approach for developing the plan" while ensuring fairness.[123]

3.3.2 Introduction of an Observation Period:

The period immediately following the opening of reorganization procedure is known as the observation period.[124] It serves as a breathing space and planning phase. Initially lasting up to four months, the period allows the debtor, under the supervisor's guidance, to draft a reorganization plan, while creditors review and propose amendments.[125] The court may extend this period—up to a total of twelve months—if substantial progress is being made and extending the stay won't unduly harm creditors.[126]

During the observation period, the existing management continues to run the company's day-to-day operations. They do not need permission for ordinary business decisions, allowing the business to function normally. However, any transaction outside the ordinary course (e.g., overly large transactions, new borrowings, asset sales, granting security, or any gifts) requires the supervisor's prior authorization. This prevents the debtor from prejudicing creditor interests during the case.

3.3.3 Classification of Creditors and Voting Regimes:

Perhaps the most significant innovation in the new commercial code is the introduction of creditor classes and majority voting in plan approval. The 1960 scheme of arrangement treated creditors essentially in two groups: *secured creditors* (who were not counted unless they surrendered collateral) and *unsecured (ordinary and preferred) creditors* whose approval was needed. Article 1140 of the 1960 Code required a two-thirds majority in value of all non-preferred unsecured debt for the scheme's approval. Secured creditors could not vote unless they partially relinquished at

[123] UNCITRAL, (n 15) para 60 page 58.

[124] Art. 651

[125] Art. 651(2)

[126] Art. 651(3)–(4)

least one-third of their security; if they voted without doing so, they were deemed to surrender their security upon accepting the scheme. This effectively excluded most secured claims from the scheme process, and all unsecured creditors were lumped into one class with a high super-majority threshold.

By contrast, the 2021 reorganization proceedings require the formation of multiple classes of affected creditors to vote on the plan. At minimum, secured and unsecured creditors must be in separate classes reflecting their divergent interests. Other classes may be constituted for employees, creditors with guarantees/insurance, and even shareholders (who, though not creditors, form a class for plan purposes if their rights are affected). Voting rights are allocated by claim amount, and a plan can be approved if it secures the requisite majority in each class – generally two-thirds by value of claims in that class.[127]

The new Code also permits *cross-class cram-down*: if one or more classes dissents, the court may still confirm the plan provided that at least one class of creditors "in the money" (i.e. not purely equity or out-of-the-money junior creditors) has accepted, and stringent fairness conditions are met.[128] These conditions include the absolute priority rule – no dissenting higher-ranking class is forced to accept less than full payment if a junior class receives anything, and no class receives more than full satisfaction of its claims.[129] The court must also ensure the plan passes the *best-interest-of-creditors test*, meaning each creditor will receive at least as much as they would in liquidation. All these mechanisms – classes of creditors, cram-down, best-interest test, absolute priority – were absent in the 1960 scheme.

The new commercial code represents a profound modernization, aligning Ethiopian law with international standards that require fair discrimination among creditor ranks and binding dissenters under protective rules. In the new regime, majority rule replaces unanimity: a qualified majority in each class can bind the minority and all similarly ranked creditors. By contrast, under the old Code a single large creditor could derail a scheme by withholding consent if the two-thirds by

[127] Art 680

[128] Art 683(3-4)

[129] Art 685

value threshold wasn't met (no cram-down existed). The shift to a multi-class, majority voting system is thus a cornerstone innovation enabling more feasible restructurings.

3.3.4 Automatic/General stay

Automatic stay is a feature of many modern insolvency law regimes by which the statutory injunction that springs into effect immediately and by operation of law upon the opening or filing of an insolvency case.[130] The stay is characterized as general because of scope extends on all individual enforcement actions striking a blanket pause and automatic because it is triggered by operation of law. It freezes virtually all individual enforcement and litigation (including secured-creditor foreclosure) against the debtor or its estate, pausing prescription periods, and channeling creditor claims into the collective proceeding so as to preserve the estate, prevent a race to the courthouse, and give the debtor a breathing spell to negotiate a plan.[131]

US law treats the stay as "one of the fundamental debtor protections", conferring the breathing spell and ending the "chaotic and uncontrolled scramble" for assets. [6] Section 362(a) bars eight broad categories of creditor conduct; § 362(b) lists exceptions. Courts have stretched the stay's reach where equity demanded, but also supply relief "for cause" to prevent undue harm to secured lenders.[132] scholars on the field remind us that coordination failures and run dynamics justify special insolvency tools, particularly in banking, where externalities loom large.[133]

3.3.4.1 Suspension of Individual Suit in the 1960 Commercial Code

The 1960 Ethiopia's Commercial Code does not recognize Automatic Stay of secured creditors enforcement rights.[134] However, the concept of suspension of individual suit had been present in the code. The code is not clear whether the suspension of suit covers secured creditors or not. Secured creditors have the strongest incentive to act quickly to enforce their rights, because they

[130] UNCITRAL (n 15) 89, Frank R Kennedy, 'Automatic Stays Under the New Bankruptcy Law' (1978) 12 *U Mich J L Reform* 3–4; John Francis Murphy, 'The Automatic Stay in Bankruptcy' (1986) 34 *Clev St L Rev* 567, 567–69;

[131] Lawrence R Ahern III et al, 'Automatic Stay: Violations, Remedies and Sanctions' (Southeastern Bankruptcy Law Institute, 2004) 2–4; Kenneth Ayotte, 'On the Mandatory Stay of Secured Creditors in Bankruptcy' (2017) SSRN Working Paper, 1–4.

[132] John Francis Murphy, 'The Automatic Stay in Bankruptcy' (1986) 34 *Clev St L Rev* 567, 567–68.

[133] Matej Marinč and Razvan Vlahu, The Economics of Bank Bankruptcy Law (Springer 2012) 6.

[134] Asress, (n 33) 278.

are backed by properties for their claims. Yet allowing them to do so could undermine the collective process. The balance between protecting the estate's value for all creditors versus respecting the rights of secured creditors had been a delicate policy question in insolvency law.

Article 1026 of the Code provides that the suspension of proceedings applies to all creditors in the "universality" (bankruptcy estate) "except creditors whose claim is secured by a special privilege, pledge or mortgage." In other words, the plain language of Article 1026 (in conjunction with Article 1025) gives the impression that secured creditors are *not* affected by the bankruptcy proceeding. Furthermore, when one reads Article 1026 together with the Code's provisions on distribution of assets (Articles 1058–1072), the same conclusion emerges.

However, the cassation court in the case of *Holland Car Pvt. Ltd. Co. vs. Zemen Bank S.Co.*, [135]decided by stating that secured creditors are *not* outside the bankruptcy proceeding and should not be allowed to foreclose on their collateral independently once bankruptcy is underway. The Cassation Court reached this outcome by looking beyond the literal text of Article 1026 to the broader policy objectives of insolvency law.

3.3.4.2 **Automatic stay in the 2021 Commercial Code**

3.3.4.2.1 Nature and Duration

A critical issue on application of the stay is whether it should apply automatically (by operation of the insolvency law) or at the discretion of the court.[136] The Ethiopian reorganization proceeding choose to incorporate a General Stay of Individual Enforcement Actions starting from commencement is made. This stay is automatic *by operation of law*; neither the debtor nor the supervisor needs to apply for it. It covers all creditors and all types of claims: secured creditors (mortgagees, pledgees) and preferential creditors are included, as well as owners of property under conditional sale agreements. [137] In effect, no creditor can seize or foreclose on the debtor's assets once reorganization is opened. The stay even suspends civil litigation and arbitration proceedings against the debtor on pre-opening debts. If a lawsuit is already pending, it's halted until the claim

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[135] *Holland Car Pvt. Ltd. Co. vs. Zemen Bank S.Co,* FSC Cassation Division File No. 102061, Vol. 17, 354.

[136] UNCITRAL, (n 15) 88.

[137] Art. 654(1)

can be submitted and handled in the insolvency process. [138] The stay also pauses the running of prescription (limitation periods) and pre-emption rights, preserving the status quo.[139]

In reorganization, the general stay runs for the entire observation period. The observation period is initially capped at four months, and the court may extend or grant a new observation period only if (a) there is relevant progress on the plan and (b) continuing the general stay does not unfairly prejudice affected parties. In all events, the total observation period—including any extensions/renewals—may not exceed twelve months.[140]

3.3.4.2.2 Exceptions to the stay

Insolvency laws shall clearly identify the actions that are to be included within and specifically excepted from the scope of a stay. UNICTRAL suggests exceptions might include set-off rights and netting of financial contracts, actions to protect public policy interests, such as to restrain environmental damage or activities detrimental to public health and safety, actions to prevent abuse, such as the use of insolvency proceedings as a shield for illegal activities, actions commenced in order to preserve a claim against the debtor and actions against the debtor for personal or family law claims.[141] Under 11 U.S.C. § 362(b) the "classic" eight explicit limitations (exceptions) to the automatic stay are listed which includes Criminal actions and proceedings, Collection of alimony, maintenance, or support obligations, Perfection of liens and other interests (e.g. filing or recording to fix priority), Governmental enforcement of police or regulatory power, Set-off of claims and debts involving commodity contracts, Foreclosure of insured mortgages on multiple-housing units by HUD, Issuance of a notice of tax deficiency by the IRS, and Application by the Securities Investor Protection Corporation (SIPC) for a protective decree.[142]

The Ethiopian law lists few targeted exceptions, echoing those mentioned under general provisions: criminal cases and purely declaratory suits can continue, and regulatory enforcement actions by government agencies (like certain tax or competition proceedings) are not stopped,

[138] Art. 657(1)

[139] Art. 654(3)

[140] 651, the law is compatable with the the UNCITRAL guidelines page 93 para 56

[141] UNCITRAL (n 15) 86-87.

[142] Frank R Kennedy, 'Automatic Stay under the new bankruptcy Law Bankruptcy', (1978) vol 12 University of Michigan *Journal of Law Reform,* 24–36.

except that tax *collection* is stayed (administrative audits or investigations may continue).[143] One interesting nuance: in reorganization, guarantors who are natural persons (for instance, an individual who guaranteed the company's bank loan) *are* allowed to benefit from the stay.[144] This means the creditor cannot pursue the guarantor during the observation period either, which helps the debtor by relieving pressure on its co-obligors and preventing indirect squeeze via guarantors. This is a debtor-friendly provision aimed at facilitating the collective plan – creditors are held at bay entirely, giving the debtor a true breathing space.

Another exception within reorganization is that the supervisory judge may lift the stay for specific secured creditors in certain circumstances: if an asset is not critical to the business (debtor not in possession of it) or enforcement by that creditor won't jeopardize the restructuring, or if keeping the stay for that creditor would cause them unfair harm.[145] This allows a degree of flexibility – for example, if a piece of equipment is collateral and not needed for the rescue, the judge might let that secured creditor proceed to sell it rather than maintain the freeze. But generally, the stay is comprehensive to give the reorganization a chance.

During the observation period, the debtor is protected from having to pay pre-insolvency debts (those incurred before opening) – their due dates are not accelerated except by the plan, and interest on those claims continues to accrue (to be addressed in the plan) but cannot be demanded now.[146] The debtor is also prohibited from preferentially paying any pre-opening,[147] which ensures equality among creditors (no one creditor should be paid outside the plan). However, the debtor must keep paying for essential new obligations; for instance, wages and ongoing expenses after opening are to be paid in the ordinary course, and in fact wages are explicitly protected (the stay cannot be used to stop payment of employees' current wages).[148] If the debtor needs to recover an asset held by a secured creditor (like redeem collateral) and it's crucial for the business, the judge

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[143] Art. 657(3)

[144] Art. 654(2)

[145] Art. 654(5)

[146] Art. 655(2)–(5)

[147] Art. 656(1)

[148] Art. 654(4)

can allow the debtor to pay that secured claim to get the asset back.[149] Overall, these provisions maintain the status quo of claims and preserve assets while allowing the business to operate with new cash.

3.4.3 The Reorganization Plan:

The centerpiece of reorganization is the formulation, voting, and confirmation of a Reorganization Plan (Arts. 678–686). During the observation period, the debtor has the primary responsibility to draft a plan of reorganization (Art. 678; and see Art. 651(1)(a)). The supervisor assists the debtor in this task, bringing in expertise and ensuring compliance with legal requirements.[150] However, unlike in preventive restructuring, the debtor's plan need not please every creditor individually. Creditors participate by reviewing the plan and can propose amendments or alternative plans.[151]

The Code's philosophy for reorganization plans is flexibility and pragmatism: essentially any reorganization measure can be included as long as it is lawful and consistent with other laws. Typical contents of a plan may include restructuring of debts — extending maturities, reducing interest, partial write-offs — conversion of debt to equity, issuance of new debt instruments to creditors, or other arrangements to satisfy claims over time.[152] The plan can also involve the reorganization of the debtor's corporate structure: for instance, decreasing or increasing the company's capital, with creditors or new investors subscribing to shares.[153] It might provide for the sale of non-core assets or business units.

One thing the plan cannot directly do under reorganization articles is effectuate an outright sale of the entire business as a going-concern – that scenario is treated separately.[154] But short of that, the plan can encompass almost any operational or financial restructuring needed to restore viability. The Code does not enumerate all required disclosures in a plan, but drawing from best practices, a comprehensive plan (and its disclosure statement to creditors) would typically include detailed information about the debtor's financial history, the reasons for its failure, the projections for its

[149] Art. 656(2)

[150] Art. 678

[151] Art. 651(1)(b); Art. 678

[152] Art. 678; Art. 627

[153] Art. 678; see also Art. 627(3)(d)–(f) in preventive context, which are analogous.

[154] If the plan fails, a sale as going-concern can be executed under Arts. 689–695.

future if reorganized, the valuation analysis comparing likely returns in reorganization versus liquidation (the "best interest of creditors" test), and so on. Such information helps creditors make an informed decision on voting.

Chapter 4:

Analyzing the Impact of Bankruptcy Provisions in the Ethiopian Commercial Code on Banks' Foreclosure Practice

4.1 Case review

Ethiopia's banking landscape has expanded rapidly in the last two decades as a result of liberalization of the industry for share companies. As of July 2025, 32 licensed banks were operating in Ethiopia out of which 31 banks are commercial institutions and one policy-driven development bank. In its supervisory role the National Bank of Ethiopia (NBE) groups commercial banks into three tiers—large, medium and small based on balance-sheet size and market share.[155] The state-owned Commercial Bank of Ethiopia (CBE)—qualifies as a large, systemically important bank, whose dominance remains pronounced: as of end-June 2024, CBE held 47.9% of all banking-sector assets. Five banks are categorized as medium-sized banks[156] with combined asset of 28.9%. The rest 25 banks[157] are labeled as small-banks with combined asset of 23.3% and none of the small banks can be considered a systemically important bank. These shows the banking sector is highly concentrated by one bank which controls nearly half of the sectors asset. Meanwhile, there are 52 microfinance institutions that primarily engage in the provision of small-scale loans.

The number of bankruptcy cases filed in Ethiopian courts was very limited prior to the commencement of the new insolvency code.[158] By the same token, the rate at which bankruptcy cases are filed under the new insolvency law remains unchanged. I have contacted all 32 commercial banks and asked whether they have active bankruptcy cases. CBE and Oromia Bank

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[155] National Bank of Ethiopia, Financial Stability Report (2024), 21.

[156] Awash Bank, Bank of Abyssinia, Cooperative Bank of Oromia, Dashen Bank, Hibret Bank.

[157] Abay Bank, Addis International Bank, Ahadu Bank, Amhara Bank, Berhan Bank, Bunna Bank, Enat Bank, Gadaa
Bank, Global Bank, Goh Betoch Bank, Hijra Bank, Lion International Bank, Nib International Bank, Omo Bank, Oromia Bank, Rammis Bank, Shabelle Bank, Sidama Bank, Siinqee Bank, Siket Bank, Tsedey Bank, Tsehay Bank, Wegagen Bank, ZamZam Bank, Zemen Bank.

[158] Tadesse, (n 3) 57.

reported that they have active bankruptcy cases. I will discuss four cases involving Banks and defaulting borrowers who invoked the new insolvency procedures to stop foreclosure.

4.1.1 Case One: Ansif Seyoum Adugna (Ansif Construction) v Commercial Bank of Ethiopia.[159]

Background and Facts:

This dispute was one of the first bank–debtor clashes to test Ethiopia's new insolvency regime. On December 3, 2021, Ansif Seyoum (Ansif Construction) petitioned the Federal High Court, Lideta Division, [160] to open a preventive restructuring proceeding. The Commercial Bank of Ethiopia (CBE) claimed exposure of ETB 256 million and had already moved to foreclose after loan defaults.

On December 21, 2021, the court issued an interim stay of all enforcement under ECC Art. 625. CBE objected, arguing the petition was defective. Then, on April 27, 2022, the court barred CBE from filing further objections, reasoning the bank was "not a party" to the preventive case at that stage. Later, on December 23, 2022, the court formally opened the preventive restructuring and gave the debtor four months to table a plan. From filing to the preparation of this research—about three years and eight months—the court granted 41 adjournments. The proceeding remains unresolved.

Arguments:

CBE argued that the debtor's petition was filed in bad faith purely to undermine a lawful foreclosure. The bank pointed out that Article 617(1) permits preventive restructuring only if the debtor "has not yet ceased payments or if less than 45 days have passed since cessation of payments." According to CBE, Ansif Construction had stopped paying long before the petition

[159] In Ansif Construction Vs Telahun Abebe, FSC File No 200023, Volume 27, 11; the cassation bench established that when a lawsuit is filed against a company, the company itself must be the named party in the suit. The court affirmed the principle that a company has its own distinct legal identity, separate from its owners or managers. Nevertheless, the official court file for the bankruptcy case indicates that both Ansif Seyoum Adugna and Ansif Construction are named as applicants.

[160] *Ansif Seyoum Adugna (Ansif Construction) v CBE,* Federal High Court, Lideta Division , 1st Bankruptcy Bench, File No 276855, (unpublished).

(approximately a year) and was already facing asset execution; thus, the 45-day threshold had lapsed, rendering the petition legally inadmissible.

CBE further argued that creditor consent is central to preventive restructuring: the Code envisions a voluntary, consensual workout—not a court-imposed plan over creditor objections. By filing unilaterally and obtaining an injunction behind the creditor's participation, the debtor subverted the spirit of the law. In filings submitted in December 2022, CBE also protested a violation of its due process rights under Article 598, arguing that the court's order barring the bank from participating deprived the main creditor of any voice in proceedings that directly affected its interests.

Finally, CBE highlighted the prejudice caused by delay: interest on the debt (over ETB 256 million principal) was accruing continuously while the collateral value remained fixed or even diminished. Each month of stay, the bank argued, eroded its security position, contrary to the creditor-protection principles in Article 597 and the broader intent that the process be efficient and time-bound. In sum, the bank maintained that the court should not have granted a stay or opened proceedings given the absence of creditor consent and the debtor's non-compliance with basic eligibility and filing requirements.

Court's Reasoning and Decision:

The Federal High Court's handling of the case was marked by pro-debtor procedural rulings. The court relied on ECC Arts. 625 and 654 to justify the December 21, 2021 injunction halting enforcement pending the court's determination—effectively freezing foreclosure ex parte. On April 27, 2022, it ruled CBE lacked standing to submit further objections before the formal opening of proceedings, treating the matter as one between the debtor and the court at that stage. When the debtor failed to file a plan within the expected window, the court nonetheless opened the preventive proceeding on December 23, 2022 and granted an additional four months to propose a plan.

Implications:

The case spotlights friction between Ethiopia's collective rescue orientation under the 2021 ECC and the power-of-sale foreclosure tradition entrenched under the 1960 ECC where mortgagees/pledgees could often enforce despite bankruptcy.

In practice, this case exposed procedural gaps, including how the stay was applied and extended, and raised questions about the implementation of the stay's maximum eight-month duration. It also illustrates how extensive adjournments and limited creditor participation can erode secured creditors' positions, potentially diverging from the Code's stated balance between efficient rescue and creditor protection.

4.1.2 Case Two: Bezu Beyene v Commercial Bank of Ethiopia, Oromia Bank, and Development Bank of Ethiopia [161]

Background and Facts:

The second case involves multiple creditors and a debtor who sought protection under the new insolvency procedures across jurisdictions. Mr. Bezu Beyene had taken substantial loans from several banks – including about ETB 130.8 million from Oromia Bank S.C. (secured by various assets), ETB 40 million from CBE (unsecured, as a pre-shipment credit), and additional facilities from the Development Bank of Ethiopia (DBE) amounting ETB 19,667,252.87. By 2022, Bezu's companies had defaulted on the abovementioned loans.

Each bank initiated separate foreclosure actions: for instance, CBE obtained a judgment for approximately ETB 20.5 million against Bezu and his guarantor in June 2022. The bank later moved to attach Bezu's assets (including a plot of land and a vehicle). DBE issued a 30-day auction notice in February 2022, warning it would sell the collateral if the debt was not cleared. Similarly, Oromia Bank advertised an auction of the debtors secured properties (including a multi-story building, a factory, and industrial equipment) in July 2022. Facing these three separate enforcement actions, Bezu Beyene filed a petition on May 9, 2022 for preventive restructuring, reorganization, or bankruptcy simultaneously in East Oromia Regional Supreme Court.

The court appointed experts from the National Bank of Ethiopia (NBE) and the Oromia Revenue Authority to examine Bezu's financial state and determine the date on which he "ceased payments" on the debts. In November 2022, NBE reported the loan account statuses from CBE, DBE, and Oromia Bank but noted that it had no specialized insolvency expert to assess viability. The Oromia revenue authority reported that Bezu owed ETB 39.45 million in taxes and asserted its statutory

[161] *Bezu Beyene and Birtukan Geda vs Commercial Bank of Ethiopia Oromia Bank, and Development Bank of Ethiopia*, East Oromia Regional Supreme Court File No. 399848 (unpublished).

priority. Subsequently, the court commissioned two independent consulting firms to study Bezu's businesses and determine the causes of failure and prospects of turnaround. The cost of this study – over ETB 500,000 – was paid by the creditors. This extensive fact-finding phase stretched well into 2023. The court also orders for the audit of the debtor's business to be examined by independent auditors.

In May 2024, the court ordered the opening of a preventive restructuring proceeding. It also directed the appointed expert to submit a preventive restructuring plan by June 2024. As of the time of writing, the court had not formally opened a reorganization or declared bankruptcy, and a protective stay on asset sales remained in effect. The proceedings have been prolonged due to the court's slow handling of the matter and multiple appeals against orders and decrees of the East Oromia Supreme Court.[162]

Arguments:

The debtor, portrayed himself as a viable business owner in temporary distress, invoking the rescue-oriented policy of the new law. In his petition, he argued that, given time and restructuring, his various enterprises could recover and eventually repay creditors in full. whereas immediate foreclosure, he claimed, would lead to piecemeal liquidation, yielding far less than the going-concern value.

The Creditors countered that Bezu was abusing the system to frustrate lawful foreclosures. They highlighted that he had been in chronic default far exceeding 45 days limit, referencing the timeline that a creditor had already publicly announced an auction in May 2022 (implying default started well before). The banks pointed out that Bezu had made no serious effort to service his debts during the court's interim protection period.

Implications:

The Bezu Beyene case illustrates how, if not managed carefully, bankruptcy proceedings could take so much time in contrary to the sprite of the commercial code and international guidelines. It shows how debtors might exploit the new insolvency law to delay actions by secured creditors and highlights the courts' struggles in applying the law effectively.

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[162] See, Oromia Bank S.C Vs Bezu Beyene, Federal Supreme Court File No. 264215 (unpublished)

For the banks, this case was a clear warning about preventive restructuring and reorganization proceedings being used to stall foreclosure. The debtor succeeded in freezing enforcement actions by three banks for more than three years, something that would have been difficult to achieve before 2021. Such delays give leverage to the debtor; by the time bankruptcy is declared (if it is), Bezu's estate might be insufficient to cover much beyond tax and employee claims, leaving the banks worse off than if they had foreclosed early.

The accumulating of interest and depreciation of collateral can swell the loan balance, eroding any chance for full recovery even if the collateral is eventually sold. For instance, in the case of Oromia Bank S.C, because the insolvency proceeding was not dismissed by operation of law, the total amount due from the respondent increased from ETB 130,863,000.49 to Birr 220,576,370.05 as of August 7, 2024.[163] The debtor initiated all three proceeding parallelly, despite the Ethiopian insolvency law not recognize concurrent filing. These shows how the law is misunderstood even by legal professionals.

4.1.3 Case Three: Commercial Bank of Ethiopia v. Tewolde Gidey Electric Cable & Wire Co.

Background and Facts:

This case concerns a deeply distressed borrower using preventive restructuring to halt a second auction and renegotiate with its main secured creditor, CBE. The parties signed loan agreements in 2011 and 2019 totaling about ETB 692 million. By early 2023 the outstanding debt was approximately ETB 389 million, with no payments made for nine months. CBE issued an auction notice to sell the mortgaged factory.

After an initial auction failed, CBE re-advertised the sale for late March 2023. Weeks before the rescheduled auction, the debtor filed a preventive restructuring petition (FHC File No. 300872). Two days later it made a token deposit of ETB 100,000, apparently to "reset" the 45-day non-payment rule. The record also shows eight prior rescheduling's granted during the loan's life, all unsuccessful.

CBE argued that a debtor in default for more than 45 days was ineligible for preventive restructuring and that the token payment was a bad-faith attempt to circumvent Article 617. It

[163] Ibid.

further stressed that the petition lacked required financial disclosures and that the pattern of stopping payments after temporary relief, then running to court when foreclosure resumed, reflected obstruction rather than a genuine rehabilitation effort.

Arguments:

The Federal High Court[164] initially granted a temporary injunction to avoid rendering the petition nugatory, then opened preventive restructuring, appointed an expert, and set a four-month plan timetable under Articles 618–619. The panel was divided: the majority read Article 625 (discontinuation of individual suits) as permitting a short halt to CBE's auction, while the dissent argued that Article 625 operates only after opening, and with expert input. CBE was not allowed to participate on the merits.

On 26 January 2024, the Federal Supreme Court[165] consolidated CBE's appeals (F.No. 245314 and 248935), quashed the order opening the proceeding and held that, under Articles 598 and 617, CBE should have been heard before the case was opened. It remanded for a prompt eligibility hearing with the Bank's participation but kept the stay in place. The Court reasoned that even though banks enjoy powerful extra-judicial realization rights under Proclamation No. 97/1998, those rights must temporarily yield to ECC; otherwise, its objectives could never be tested.

The Supreme Court reasoned that: -

'Although the debtor's petition expressly listed the Bank as respondent, the Bank had been invited to comment only on the requested injunction, not on the restructuring petition itself. Under the Civil Procedure Code, every defendant or respondent is entitled to file a response to any pleading, and Article 598 of the Commercial Code reinforces that right by requiring that creditors be heard before a restructuring is opened.'[166]

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[164] Tewolde Giday Electric Cable & Wire Co v. Commercial Bank of Ethiopia, Federal High Court Lideta Division File No. 300872, (unpublished).

[165] Commercial Bank of Ethiopia v Tewolde Giday Electric Cable & Wire Co, Federal Supreme Court, File No. 245314 and 248935 (unpublished).

[166] Ibid, translated by the author of the research.

The debtor then petitioned the Federal Supreme Court Cassation Division, [167] claiming Articles 617–618 required the court to decide on the debtor's filings alone and that creditors would only be consulted later through the professional appointed under Article 621.

On 5 March 2025 the Cassation Division amended both lower decisions and set out a controlling approach for preventive restructuring. Its core holdings were that:

(i) Time discipline—prepare a plan within four months and never exceed eight months in total as provisioned in Article 618;

(ii) Procedure—run the matter in a transparent, efficient, effective way, not like ordinary civil litigation with the spirit of article 588/1 and 617/1 of the code;

(iii) Participation—creditors must be heard before opening of preventive restructuring, through oral or written comments with supporting evidence, as per article 598 of the code; and

(iv) Purpose—only promising debtors should access the tool, while creditors' legitimate interests are protected.

The Division faulted the High Court for opening the proceeding without first hearing CBE on eligibility and faulted the Supreme Court for framing the case in an ordinary civil-procedure posture, ignoring Book III's special, expedited character. Preventive restructuring was recast as a narrow, time-bound gateway: a brief pause, rapid creditor participation, and an early legality check under Article 617(1).

As a remedy, the Division remanded to the Federal High Court with specific instructions: reopen the record; invite the Bank's comments; test the Article 617(1) requirements; and, where needed, conduct further examination under Article 617(2) before deciding the petition. It stressed that confidentiality or informality cannot override secured creditors' right to be heard and that the four- to eight-month timetable must be respected.

Following the Cassation decision, the debtor obtained additional financing from a third party and reached an arrangement under which the third party would fund the debt -while the Bank extended a loan package to that financier.

[167] Tewolde Giday Electric Cable & Wire Co v. Commercial Bank of Ethiopia, FSC Cassation Bench File No. 262505 (unpublished).

Implication

The ruling does more than resolve a single dispute; it creates a procedural template for preventive restructuring. By identifying fundamental errors and amending both the High Court and Supreme Court decisions, the Cassation Division reaffirmed its supervisory role and issued binding guidance: creditors—especially secured banks—must be heard pre-opening; proceedings must be transparent and efficient; and insolvency cases should not default to ordinary civil-litigation patterns.

Equally, the Division links Book III's text to its policy aims: economic stability, preservation of asset value and rigorous screening so that only viable debtors access preventive restructuring. Procedure is tied to purpose: courts must promptly test the Article 617(1) criteria with creditor input and keep the entire process on a strict timetable—submission of a preliminary plan within four months and an absolute ceiling of eight months under Article 618.

4.1.4 Case Four: Gendewha Cotton Ginning Factory v Commercial Bank of Ethiopia

Background and Facts:

Gendewha Cotton Ginning Factory, a borrower from CBE, defaulted on a loan of ETB 126 million. CBE initiated the process to sell the collateral assets, which include the factory's ginning equipment and warehouses. Prior to the filing of the proceeding, a fire broke out at factories main warehouse, and subsequent heavy rain and hail destroyed a large quantity of stored cotton. To make matters worse, the company lost major contract with a government entity, plunging it into deeper financial distress. The company claimed losses of approximately ETB 88.3 million as a result.

Facing CBE's foreclosure action, the debtor filed a petition on 19 December 2022 in the Amhara National Regional State Supreme Court.[168] The petition requested that the court order CBE to restructure the debt and extend the repayment period by two years, based on a future viability study, and to suspend any legal or extra-judicial proceedings by CBE to recover the loan.

[168] Gendewha Cotton Ginning Factory v Commercial Bank of Ethiopia, Amhara National Regional State Supreme Court File No 01–60320, (unpublished).

Arguments:

CBE argued that mandatory preconditions for preventive restructuring were not met. specifically, the debtor had ceased payments for more than 45 days at the time of filing. The timeline confirmed that the factory last payment to CBE was made on April 02, 2022, and the petition was filed on December 19, 2022—well beyond the 45-day limit. CBE relied on this violation of Article 617(1) to insist the petition be dismissed outright.

Initially, the Amhara Supreme Court issued a stay halting CBE's foreclosure. However, the court swiftly dismissed the debtor's petition on 5 April 2023.

This case highlights the rigorous application of statutory criteria. The primary legal issue was the strict enforcement of the 45-day rule. Unlike the first two cases, where courts found reasons to overlook or further test this rule, here the court treated it as determinative: Gendewha Factory failure to file within the allowed window after ceasing payments was fatal to its petition. This reflects a textualist and strict approach—reinforcing that preventive restructuring is intended only for debtors at the very early stage of financial difficulty, not those who in long-term delinquency.

Another notable issue was creditor consent and participation. while the case did not progress to the stage of developing a restructuring plan, the court acknowledged CBE's arguments and gave them significant weight. This demonstrated that a debtor cannot unilaterally impose a preventive restructuring procedure without creditor input when the statutory requirements are not met.

Implications:

The case demonstrates the application of the law as written. The court recognized CBE's standing and right to be heard early in the process—CBE's objections were entertained at the outset, in contrast to other cases where creditors were told to "wait."

The case was resolved quickly, in line with the statute's expectations. The tone of the decision reinforced the integrity of the insolvency system. The court recognized that delaying foreclosure in this instance would have been pointless.

4.2 Gaps and Challenges

The analysis of the foregoing cases reveals that, although Ethiopia's new insolvency framework (Commercial Code 1243/2021) is a significant step toward balancing debtor and creditor rights, its implementation has exposed several gaps and challenges. This concluding section synthesizes those issues and offers recommendations for reform and best practices, informed both by the above-mentioned case studies and the broader context of the thesis.

Gaps and Challenges in implementing the laws

4.2.1 Prolonged Proceedings & Missed Deadlines

Insolvency cases are often stretching far beyond the timelines envisioned by law. Statutorily, a restructuring plan must be agreed within 4 months of opening (extendable to 8 months maximum). In practice, as seen in *Ansif* Construction and *Bezu Beyene*, some cases have dragged on well past these limits. These delays defeat the law's purpose of a timely process and severely prejudice secured creditors, who watch their security erode while the debtor enjoys a moratorium.

As the Cassation Division in the case of *Tewelde Giday* reasoned insolvency cases should not be governed by ordinary civil procedure rules. According to Federal Courts Civil Cases Flow Management Directive No. 008/2022, cases that arise out of Commercial Code shall be finalized in one year.[169] Similarly, the directive states that Judges may, on their own initiative or upon a petition submitted to them, prioritize the resolution of the case over other matters, taking into account the urgency of the case.[170] Thus, even though insolvency is not mentioned in article 7 of the directive in particular, judges should give priority for insolvency cases.[171]

Other pitfall regarding missed deadlines arises as a result of the two-month judicial recess. The Federal Courts Proclamation 1234/2021 Article 38/2 states that Federal Courts shall be closed for Two months with no special accommodation for urgent bankruptcy matters. [172] Even though sub-article 3 articulates that in emergency cases the court could entertain the case by which the particulars shall be determined in directives to be issued by supreme court. However, these

[169] Federal Courts Civil Cases Flow Management, Directive No. 008/2022, 25

[170] Ibid, 7(2)

[171] Interview with Henok Kebebe, (n 93).

[172] Federal Courts Proclamation No 1234/2021, 27th yearm No 26 Addis Ababa 26th April 2021, Art 38

procedural shortcomings defeat the purpose of the new law's expedited timeline and call for stronger enforcement of deadlines or special insolvency procedures to prevent undue delay.

4.2.2 Debtor Misuse of Stay

A troubling pattern is emerging of debtors invoking preventive restructuring as a last-minute stalling tactic to block foreclosures. In multiple cases, debtors facing imminent asset auctions filed preventive petitions on the eve of sale, triggering an automatic stay and freezing enforcement. Examples include *Bezu Beyene* (defaulted on huge loans, filed just as banks moved to auction properties) and Ansif construction who petitioned without meeting eligibility criteria yet obtained an injunction. Some debtors have even made token payments to "reset" the 45-day clock – e.g. in *CBE v. Tewolde Giday*, the debtor paid a mere 100,000 ETB after filing (on a multimillion debt) to claim it was now within 45 days of last payment. These tactics evince a lack of good faith. Courts have at times unwittingly accommodated them (by allowing amendments or not verifying last payment dates), thus rewarding strategic win for the debtors by helping them to buy time.[173]

4.2.3 Inconsistencies and Judicial Capacity Issues

The case studies reveal widely varying approaches by courts, indicating a lack of consistent application and possibly limited understanding of the new provisions among some judges. For instance, the Amhara Supreme Court in *Gendewha* case dismissed a clearly ineligible petition within moderate time frame. By contrast, the Oromia supreme court in *Bezu Beyene* case allowed proceedings to continue for several years, with repeated extensions. Similarly, the *Ansif Construction* case in the Federal High Court saw judges improperly barring creditor participation, whereas the federal cassation court in *Tewolde Giday* later corrected course and enforced the law strictly.

These inconsistencies stem in part from insufficient training and guidelines – many judges lack experience in the insolvency proceedings, and no dedicated commercial benches exist outside Addis Ababa.[174] Moreover, procedural law has not been updated: courts apply the 1965 Civil Procedure Code to insolvency matters, which causes friction. For example, some courts wait for

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[173] Interview with Yegrem Negash, Attorney at Oromia Bank S.C, May 10, 2025.

[174] Federal High Court Ledeta Division have a dedicated bankruptcy bench.

formal expert evidence or treat preventive cases like ordinary civil suits, causing delay contrary to the "efficient and timely" spirit of the new law.

4.2.4 Conflict with Pre-Existing Foreclosure Laws

Incorporating a stay provision that also binds secured creditors is crucial to execute effective insolvency regime. On the other side, financial institutions need to recover debts in timely manner in order sustain healthy financial system. As stated in the preamble of the foreclosure proclamation the need to adopt law is to create a conducive environment to economic development by enabling banks to collect their debts. However, if the statutory durations are not tightly observed, the stay will lead to delay and undermines the very credit discipline that Proclamation 97/90 was enacted to protect.[175]

4.2.5 Unbalanced Treatment of Creditors and Debtors Rights

While the 2021 Commercial Code aimed to recalibrate the imbalance of the 1960 Code (which favored creditors), early experience suggests the pendulum may have swung overly in favor of debtors. The automatic stay is a powerful shield for debtors, halting all enforcement and potentially allowing a business to continue operating under court protection. However, unlike in some jurisdictions, Ethiopian law currently provides only minimal safeguards for secured creditors during the stay.

The new Code's provisions are limited to a general clause allowing relief for "unfair prejudice" (e.g., Art. 654(5)), which thus far has proven insufficient or has been underutilized. Consequently, creditors in Ethiopia can be left in limbo for an extended period – accruing interest and legal costs, but receiving no payments – as was evident in several case examples. This outcome risks replacing the old problem ("creditor takes all" in liquidation) with a new one: "creditor gets nothing for too long." The challenge moving forward is to refine the balance between debtor reprieve and creditor rights. Ethiopia must consider introducing stronger protections for secured creditors (e.g., permitting courts to require interim payments, or to lift the stay if collateral is depreciating), so that the laudable goal of business rescue does not inadvertently punish secured lenders and deter credit creation. In sum, the early cases expose a need to fine-tune the law to better balance interests

[175] Interview with Eleni Gonfa, Attorney at Nib International Bank S.C, May 10, 2025.

– protecting genuine rehabilitation efforts without giving debtors a license to harm creditor interests with impunity.

Chapter 5

Recommendations and Conclusion

5.1 Recommendation

5.1.1 Special Civil Procedure Rules for Insolvency Cases

In *Twelde Geday* case, courts were urged to handle insolvency matters with greater clarity and intent—not like routine civil disputes. However, courts are still using the old civil procedure rules which are not tailored for insolvency (leading to e.g. unnecessary delays for expert appointments, or uncertainty about procedural costs as in Bezu's case). The Judiciary, should develop Insolvency Procedure Rules that streamline preventive and reorganization cases (e.g. simplified form for opening, strict deadlines for examiners/trustees, cost allocation rules). This will make the process more predictable and efficient for all parties.

Article 1019(2) of the Civil Code seems to reveal an intention from the drafters to develop parallel insolvency procedures. But the 1965 Civil Procedure Code never incorporated procedural rules for insolvency cases.[176] The Commercial Code, on its own, incorporates a procedural timetable for stay provisions. However, the judiciary's broader adjournment practices do not align with the time-bound nature of bankruptcy proceedings. For that reason, I recommend that the Supreme Court place special emphasis on the follow-up and management of insolvency cases.

5.1.2 **Enforce Eligibility and Good-Faith Filing Rigorously**

The early experience shows the importance of gatekeeping the preventive restructuring entry point. Courts must strictly enforce the 45-day rule (Art. 617(1)) and other filing prerequisites. A debtor who has been in default beyond 45 days should not be allowed into preventive restructuring. To support this, the law (or perhaps a practice direction) could require debtors to attest under oath to their last payment date in the petition. Additionally, token payments made post-petition to feign eligibility should be viewed skeptically; judges should count 45 days from the last substantial payment before filing. The Code already permits denial of proceedings to fraudulent debtors (Art. 635(2)); this needs to be actively applied. It might be beneficial for lawmakers to add an explicit provision allowing courts to dismiss petitions filed solely to delay (akin to "bad faith

[176] Tadesse, (n 3) 67.

filing" dismissal in other jurisdictions). This would deter abuse. Moreover, creditors should be permitted to contest eligibility early – courts should invite creditors at the outset (even before formal opening) to present any evidence that the debtor doesn't qualify or is acting in bad faith. Early creditor input can prevent an undeserving case from proceeding under the shield of a stay.

5.1.3 Strengthen Protection for Secured Creditors During Stays

To truly balance rights, Ethiopia should utilize "adequate protection" into its insolvency practice. In many systems (e.g. US, EU), if a secured creditor's collateral is at risk of losing value during a stay, the court can require measures to protect that creditor (like periodic cash payments, additional collateral, or relief from stay). The current Commercial Code lacks explicit adequate protection provisions. However, Article 654(5) allows the supervisory judge in reorganization to exclude certain claims from the stay to avoid "unfair prejudice" to creditors. This is a start, but it is vague. Ethiopia could refine this by, for instance, providing in the law (or via directive) that if a preventive restructuring or reorganization will significantly harm a secured creditor (through collateral depreciation or accruing interest), the court should either (a) lift the stay as to that creditor, or (b) order the debtor to provide some form of protection (e.g., maintain insurance on the asset, pay interest at a reduced rate during the stay, etc.).

Drawing inspiration from UNCITRAL's Legislative Guide on Insolvency and other jurisdictions, a concept of "economic value" preservation for secured creditors could be introduced. This ensures that the stay doesn't ultimately leave secured creditors worse off. In practice, it could mean that if an asset is worth 100 million and the debt is 80 million, but during a delayed process the asset falls to 60 million, the creditor might be allowed to foreclose unless the process provides assurance of covering that loss (which rarely it can). Implementing adequate protection would encourage creditors to cooperate (knowing they won't be unduly harmed by waiting) and prevent debtors from overusing the stay as a free pass. It's a delicate balance, but necessary to prevent the scenario observed where collateral value got outpaced by interest accrual.

5.1.4 Introduce Specialized Insolvency Benches and Training

The inconsistent outcomes highlight the need for greater judicial specialization and capacity-building in insolvency matters. It is recommended that dedicated commercial benches be established at least in major regions with judges trained in the new insolvency provisions. The Federal High Court in Addis already have a commercial bench; however, the quality of the trial is

far from perfect. Training programs or workshops for judges (and practitioners) on the 2021 Code would also fill knowledge gaps. Judges should be comfortable with concepts like class-based voting, cram-down, or DIP financing, which are all new to Ethiopian law, so they are not overly cautious or prone to error.

5.1.5 Legislative Tweaks to Harmonize Foreclosure and Insolvency

It may be prudent to amend existing laws to better integrate secured transactions enforcement with insolvency proceedings. One approach could be: if a debtor is already subject to a foreclosure proceeding (auction scheduled) and then files for reorganization, the law might allow that auction to be stayed but given priority in the insolvency process. For instance, the reorganization plan could be required to address that secured claim specifically – if the debtor cannot promptly propose how to cure or restructure that debt, the court could lift the stay for that asset. Another idea is to incorporate a rule that repeated or serial filings to block foreclosure are barred: if a debtor files preventive restructuring after already missing the 45-day window (perhaps by making small payments), the court should treat it as void. In terms of bankruptcy distribution, while the new Code's ranking (which places certain preferred claims like wages and taxes ahead of secured creditors up to certain limits) aligns with modern standards of fairness, it is a shift from prior absolute priority of secured claims. To mitigate creditor concerns, the government could consider establishing a compensation mechanism for creditors in cases where lengthy stays or bankruptcies lead to large shortfalls – for example, a portion of the proceeds from sales could be reserved for a fund to partially reimburse secured creditors if delays caused by the proceedings significantly devalue their recovery. This is an ambitious idea, but it would show that policy recognizes the banks' predicament and shares the burden. More practically, ensuring tax authorities and other priority claimants participate in the proceedings early (as the Oromia court did by inviting the Revenue Authority) will help creditors gauge potential outcomes and possibly adjust their strategy (e.g., pushing for conversion to liquidation sooner if they see the asset pool will barely cover priming claims).

5.1.6 Promote Rescue Culture but with Accountability

The overarching goal of the new law is laudable – to foster a rescue culture where feasible. Story of successful insolvency outcome is rare. If the ECC insolvency framework rescue any business and affecting a working foreclosure framework the overall treatment of bankruptcy should be

reviewed. To create rescue culture, debtors must be honest to the procedure and they should be held accountable to the process. Therefore, courts and practitioners should ensure that when a stay is granted, the debtor's management is monitored and held to task. The Code provides for supervisors and experts even in preventive cases (the court can appoint an expert to facilitate negotiations). Courts should use these provisions: appoint a restructuring expert early who can report on whether the debtor is engaging with creditors, producing a plan, and not dissipating assets. If the debtor is flouting the process (e.g. not providing information, or using the stay merely to delay while having no intention of restructuring), the court should terminate the stay. Essentially, the stay should be conditional on the debtor's diligence. Additionally, to encourage seriousness, Ethiopia could require a small bond or deposit for filing preventive restructuring – say a debtor must deposit a certain percentage of its debt or expenses (refundable if a plan is confirmed) to discourage frivolous filings. Some jurisdictions use mechanisms like requiring debtors to pay quarterly fees during Chapter 11 or to deposit trustee costs upfront; similar measures could be adapted. This ensures only debtors who sincerely intend to reorganize (and have some capacity to do so) will initiate the process.

5.1.7 Public Awareness and Credit Market Adjustments

Outside the legal changes, it's important for the banking and business community to adjust to the new reality. Banks should update their loan agreements to reflect the possibility of insolvency proceedings – for example, including covenants that if a borrower files for preventive restructuring, it constitutes an act of default allowing the bank to accelerate other loans (though enforcement of that might still face the stay, it sets a clear contractual expectation). Banks might also demand more collateral or guarantees knowing that enforcement can be delayed. On the flip side, businesses and professionals (like accountants, lawyers) should be educated about using the preventive restructuring in the right way – as an opportunity for consensual turnaround, not just a delay tactic. If more debtors approached creditors earlier (within the 45 days of trouble) and worked out plans, the procedure would fulfill its intended purpose of avoiding value destruction and preserving going concerns, which in turn benefits creditors by potentially yielding higher repayments than a fire-sale. Thus, there should be outreach (perhaps by the government or business associations) explaining the preventive restructuring option and encouraging a culture of negotiation and transparency when companies face distress.

5.2 Conclusion

This thesis examined a central query: how the bankruptcy provisions of the 2021 Ethiopian Commercial Code affect the rights of secured creditors—especially banks' power-of-sale foreclosure—and the legal and practical implications flowing from that reform. The inquiry covered preventive restructuring and reorganization under Book III, the stay architecture they introduce, and their point of contact with long-standing foreclosure statutes that had enabled swift realization of collateral through public auction.

The legal picture is now clear in its direction. The Code's stay mechanisms—single stays in preventive restructuring and the automatic/general stay in reorganization (and mutatis mutandis in bankruptcy)—halt individual enforcement, including in rem actions, once proceedings open. Foreclosure proclamations from 1998 remain potent, though their operation now occurs within a collective framework that prioritizes a single forum, shared timelines, and court-supervised coordination. Confidentiality protections in preventive restructuring aim to preserve value and reduce panic, while creditor participation rights ensure that secured creditors are heard and informed. Priority, timing, forum discipline, and stay relief standards therefore require careful and consistent application so that secured enforcement and collective rescue operate in a coordinated way.

Practice on the ground tells an equally important story. Some debtors file to obtain breathing space with little prospect of genuine turnaround. Proceedings extend; Auctions stall; Collateral values drift, and recovery horizons lengthen. Judicial responses vary from bench to bench, which amplifies unpredictability. Banks reassess risk pricing and collateral policy in light of broader, longer, and less certain enforcement paths. Market participants notice the change in tempo and cost. Workouts governed by banking directives remain vital, with limits on repeated restructurings intended to discourage evergreening and to keep balance sheets honest. The credit system consequently carries new frictions that were not present when foreclosure moved quickly and largely outside court.

The research question can now be answered directly. The 2021 insolvency framework reorders enforcement by moving secured recovery into a collective process where stays, information rights, voting rules, and court oversight set the pace. Banks retain security and priority, while foreclosure becomes one tool among several, subject to coordinated timing and creditor-protection safeguards.

Where the regimes intersect—stay scope, creditor access in confidential phases, relief from stay, valuation, and adequate protection—predictable rules and steady application are decisive for outcomes.

This study contributes by mapping that intersection with doctrinal analysis, case-based observation, and comparative references, and by identifying the points where coordination yields the largest gains: clear eligibility and timing thresholds, disciplined stay endpoints, reliable creditor participation, early valuation and adequate-protection pathways, and specialized benches that cultivate consistency. Limitations remain—sparse reported case law, confidentiality around active matters, and incomplete official statistics—so ongoing documentation and data collection will sharpen the picture over time.

The path forward is compact and achievable. Align procedure so that stays are time-bound and purposeful, relief from stay is available where secured positions erode, creditor hearing rights function even when confidentiality applies, and courts work from shared playbooks that reduce variance. With these elements in place, viable firms receive a real chance at rescue, non-viable firms exit without delay, and secured lending retains confidence. The system then delivers what the reform intended: a coherent enforcement narrative that supports business rescue while preserving the predictability on which credit markets depend.

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Interview Questions

1. Since 2021, how frequently have debtor filings (preventive restructuring or reorganization) intersected with scheduled bank foreclosures, and what typical outcomes followed?
2. In your experience, how rigorously do courts assess filing eligibility and good faith (e.g., cessation-of-payments timing) and balance confidentiality with creditors' right to be heard?
3. What has been the practical effect of the single stay and automatic stay on secured creditors' power-of-sale (duration, scope, and consistency), and on what grounds have courts granted or denied relief from stay?
4. Have courts ordered "adequate protection" (e.g., periodic payments, additional security, reporting) for secured creditors during the stay? If yes, in what forms; if not, what consequences have you observed?
5. Where are the main procedural or institutional bottlenecks (bench specialization, timelines, recesses, valuation/expert capacity), and how do they affect case duration and recoveries?
6. How are conflicts between insolvency proceedings and foreclosure rules handled in practice (e.g., eve-of-auction filings, two failed auctions and bank appropriation)? Please share illustrative examples.
7. How have NBE asset-classification and restructuring directives influenced banks' strategies (workouts vs. litigation), provisioning decisions, and appetite for settlement under the new regime?
8. What three concrete reforms (procedural, legislative, or regulatory) would most improve the balance between business rescue and secured-credit enforcement—and why?