Business Reorganisation Assessment

North Macedonia

European Bank
for Reconstruction and Development

Special thanks to:

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Part A

General Information

Macro Data

2.076	3.8%	US$ 6,660	ден Macedonian denar–MKD	10%	2.0%	16.3%
Population (million)[1]	GDP growth rate[1]	GDP per capita[1]	Currency	Corporate tax rate[2]	Inflation rate[1]	Unemployment rate[1]

Insolvency Legislation

The primary legislative texts governing insolvency and restructuring proceedings of legal entities and natural persons (including entrepreneurs) in North Macedonia are the **Law on Bankruptcy** (the Insolvency Law) (Official Gazette of the Republic of North Macedonia Nos. 34/2006, 126/2006, 84/2007, 47/2011, 79/2013, 164/2013, 29/2014, 98/2015 and 192/2015), and the **Law on Out-of-Court Settlement** (the Out-of-Court Restructuring Law) (Official Gazette of the Republic of North Macedonia No. 12/2014).

[1] **IMF – Source as of August 2021:** www.imf.org/en/Countries/MKD

[2] **PWC – Source as of August 2021:** taxsummaries.pwc.com/north-macedonia/corporate/taxes-on-corporate-income

Insolvency Data

All writs, including decisions, invitations, and notifications with respect to insolvency proceedings, including the out-of-court settlement procedure and the reorganisation procedure, must be submitted to the **Central Registry of the Republic of North Macedonia** for publication on its website. Insolvency (bankruptcy) proceedings are officially published in the Official Gazette, as well as electronically on the following website: **www.slvesnik.com.mk/** but only subscribers to the Official Gazette have access to the data. No aggregated statistical data is available on insolvency proceedings; however, the Central Registry website publishes a list of business entities in insolvency (bankruptcy) proceedings, which is available **here**.

According to a 2021 entry by the **State Statistical Office of North Macedonia**, 4,885 companies went into liquidation in 2018, representing 7% of the active companies. There are no official statistics regarding businesses, which went through either reorganisation or out-of-court settlement (see below).

Company Information

The company law framework in North Macedonia is governed mainly by the **Company Law**, the **Law on Civil Procedure**, the **Law on Courts** and the **Law on Enforcement**.

The **Central Registry of the Republic of North Macedonia** is in charge of centralising the trade register and the register of other legal persons, the register of annual accounts, the pledge register, the register of direct foreign investments and the newly established register for beneficial owners. The Central Registry provides online services for submission or request of documents and is available at: **e-submit.crm.com.mk**.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency and restructuring proceedings are overseen by first instance courts as listed in the **Judicial Portal**. Jurisdiction of the court in relation to legal entities is determined by the location of the registered office of the company, and in relation to natural persons, by the place of main residence.

The **Ministry of Economy** is the main authority responsible for insolvency proceedings and supervision, licensing and examination of insolvency practitioners (also known as administrators or trustees). Insolvency practitioners are members of a Chamber of Insolvency Practitioners. The Chamber organises, in cooperation with the Ministry of Economy, special expert training for insolvency practitioners and participates in the examination committee for prospective insolvency practitioners. With respect to the out-of-court settlement procedure, a settlement board is appointed on a case-by-case basis by the **Ministry of Economy** to act as an approving authority in lieu of the court for an out-of-court settlement agreement. Members of the settlement board must have a degree in either law or economics.

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Part B

Business Reorganisation

Are there any incentives for extrajudicial voluntary agreements (workouts)?

No, there are no incentives for the debtor and its creditors to reach a voluntary out-of-court restructuring. Although the Out-of-Court Restructuring Law regulates the out-of-court settlement procedure, this procedure is mandatory for the debtor (Article 26). Article 9 of the Law establishes the principle of voluntariness with respect to creditors.

What is the nature and purpose of the reorganisation procedure?

North Macedonia has two main procedures which may lead to the reorganisation of the debtor: the reorganisation procedure (Постапка за реорганизација) and the out-of-court-settlement procedure (постапка за вонсудско спогодување). **Click here** for a high-level overview of these procedures.

Reorganisation procedure

Reorganisation is part of the main insolvency proceedings, which may result in either the reorganisation or liquidation of the debtor business. However, it can be accessed directly where the debtor petitions for insolvency with a pre-negotiated reorganisation plan (see below).

Reorganisation is defined as the process in which the assets, the financial condition and the sustainability of the debtor's undertaking may be renewed and the debtor's undertaking may continue functioning. This is achieved by using several means defined in the Insolvency Law – primarily debt write-off, debt deferral, debt-to-equity swaps, and the sale of the business as a whole or in part (Article 2).

Reorganisation can be achieved through a pre-negotiated plan filed simultaneously with the petition for initiation of main insolvency proceedings (Article 215-c-1). The plan is not pre-voted; instead the judge will convene the creditors' assembly for discussion of and voting on the proposed reorganisation plan (Article 228). Alternatively, a plan may be filed after the main insolvency proceedings have been opened, at the latest within 15 days prior to the holding of the first creditors' assembly (Article 215-a-1 and 2).

Out-of-court settlement

This procedure is conducted with the aim of enabling a debtor, and to provide more favourable possibilities for creditors to settle their claims than in an insolvent liquidation of the debtor (Article 8). The procedure is conducted fully out-of-court and is overseen by a settlement board composed of three members appointed by the Minister of Economy.

Within this procedure, several measures can be proposed, including debt write-offs, recapitalisations, debt-to-equity swaps and payment in instalments (Article 30).

Additionally, an accelerated out-of-court settlement procedure is available for debtors with maximum claims of 1 million denar (approx. €16,000) according to the report on the financial status and operation of the debtor and which employ fewer than ten workers. The shortened procedure must end within 60 days of its initiation. The provisions of the Out-of-Court Restructuring Law referring to the appointment of an insolvency practitioner (trustee) do not apply to the accelerated out-of-court settlement procedure (Article 50).

References to Articles in this part are to Articles of the Insolvency Law or the Out-of-Court Restructuring Law, unless specified otherwise. For an explanation of technical terms, please see the **Glossary of the Main Assessment Report**

Who can commence the process and what entry conditions apply?

Reorganisation procedure

Main insolvency proceedings (including reorganisation) of the debtor are conducted when the debtor is unable to pay, i.e. insolvent, or where its inability to pay is imminent (Article 5). Insolvency is defined as when the debtor is late in meeting one or more monetary obligations for more than 30 days. A debtor is insolvent if it becomes unable to make payments and/or becomes over-indebted (Articles 4 and 5). A debtor, creditors or any other person authorised by the law can submit petition for initiating insolvency proceedings.

It is possible for a debtor to access the reorganisation procedure immediately if it submits a reorganisation plan alongside the proposal for initiating insolvency proceedings (Article 215-a-1).

The reorganisation procedure may also be initiated at a later stage in insolvency proceedings on the proposal of the insolvency practitioner in the report on the economic and financial standing of the debtor, based on a decision of the creditors at the first reporting creditors' assembly (Article 215-a-2). If the creditors at the first reporting assembly approve the reorganisation proposal, the insolvency practitioner must submit the reorganisation plan at the latest within 30 days of the day on which such authorisation was given.

Out-of-court settlement

A debtor which is in a state of lack of liquidity, or insolvency, is obliged to propose the initiation of a procedure for out-of-court settlement (Articles 7 and 26). The proposal for initiation of out-of-court settlement must be submitted to the Ministry of Economy (Article 27). Fines can be imposed on debtors which do not initiate the procedure in a timely manner (Article 71).

An out-of-court settlement procedure cannot be conducted if main insolvency proceedings have been initiated with respect to the debtor.

Is there any court involvement?

Reorganisation procedure

Yes, the procedure is fully court-supervised. Within three days of the date of submission of a petition for insolvency accompanied by a pre-negotiated reorganisation plan, the judge will decide on commencement of a preliminary procedure for examining the conditions for commencement of the procedure. A hearing will be scheduled for deciding on the proposal and voting on the plan, to which all known creditors of the debtor will be summoned. The hearing will be held within 60 days of the date of the court's decision to open preliminary proceedings, during which period preliminary proceedings are completed (Article 215-d).

Out-of-court settlement

No, the court is not at all involved in this procedure. The procedure is overseen by a settlement board appointed by the Minister of Economy. The settlement board appoints an insolvency practitioner known as a trustee to investigate the debtor's assets, examine the lists of creditors, the debtor's debtors and reported claims, and to manage other issues related to the investigation procedure (Articles 19 and 20).

Are there any hybrid reorganisation procedures?

There is no hybrid reorganisation procedure. The out-of-court settlement procedure is conducted fully out-of-court by the settlement board.

Does the debtor remain in possession of and continue to manage its business?

Reorganisation procedure

Yes, with reservations. The debtor is allowed to manage or exercise power of disposal over its entire property, unless otherwise prescribed in the Insolvency Law (Articles 215, 255 and 256). However, on request of the creditors, the judge will revoke the ability of the debtor to manage the business if it is convinced that the personal management by the debtor under the supervision of a trustee will delay the procedure, hinder the implementation of the reorganisation plan or cause any other damage to creditors (Article 257).

Out-of-court settlement

Yes, the debtor remains in possession, subject to the oversight of an insolvency practitioner (trustee) whose work is, in turn, supervised by the settlement board (Articles 22 and 23). In accordance with the principle of good faith, neither the debtor nor the creditors can take any actions that might cause damage during the procedure (Article 11).

Is there a need to appoint an insolvency practitioner?

Reorganisation procedure

Yes, an insolvency practitioner (known as a trustee) is appointed with the court decision to initiate main insolvency proceedings. Insolvency practitioners are as a rule appointed by selecting a candidate from a ranking list that is automatically updated from the data submitted on a daily basis by the Automated Court Case Management Information System (ACMIS). However the insolvency practitioner candidate may be replaced later in proceedings by a candidate selected by creditors at the first reporting assembly (Article 31). Supervision of implementation of the reorganisation plan may be entrusted to the insolvency practitioner after conclusion of the insolvency proceedings.

Out-of-court settlement

Yes, when the settlement board decides that the conditions for initiation of the procedure are met, it appoints an insolvency practitioner known as a trustee from the list of authorised insolvency practitioners (Article 21).

Is there any applicable stay or moratorium?

Reorganisation procedure

Yes, a moratorium is available immediately on the request of the petitioner for insolvency proceedings or of its own initiative before official adoption of a decision by the court to commence proceedings. The judge may, with the decision for initiating preliminary proceedings, ban or temporarily postpone enforcement proceedings against the debtor (Article 58).

After the initiation of insolvency proceedings, any ongoing enforcement proceedings are automatically terminated and no new enforcement proceedings may be initiated. However, creditors with segregation rights and rights to separate satisfaction i.e. secured creditors may file enforcement proceedings against the debtor (Article 146).

Out-of-court settlement

Yes. Enforcement proceedings initiated before the procedure is commenced with respect to both unsecured and secured creditors are suspended and no enforcement of claims or creation of security interests is permitted during the procedure (Article 53) subject to the following exception: creditors with segregation rights and creditors with the right to separate satisfaction, i.e. secured creditors, which have acquired the right to separate satisfaction 90 days before the initiation of the out-of-court settlement procedure may enforce their claims (Article 53). The legal consequences of the procedure and moratorium come into effect the day following the date of publication of the announcement initiating the procedure on the website of the Central Register (Article 51).

Is there any protection for essential contracts and to prevent termination of contracts by third parties?

Reorganisation procedure

Yes, some limited protection is afforded to prevent termination of contracts by third parties. Contracts for the lease of real estate or premises, in which the debtor is a lessor, remain in force for the benefit of the insolvency estate (Article 164).

Contractual provisions that, in advance, exclude or limit the application of the provisions of Articles 157 to 170 of the Insolvency Law with respect to fulfilment of legal matters have no legal effect.

However, the Insolvency Law does not contain any express provisions with respect to contracts that are essential for the day-to-day operations of the debtor or any general protection against third-party termination provisions based on the entry of the debtor into an insolvency procedure.

Out-of-court settlement

No, there is no protection against termination of contracts by counterparties on the ground of commencement of out-of-court settlement proceedings and no protection for contracts that are essential for the day-to-day operations of the debtor.

Is new financing protected by law?

Reorganisation procedure

Yes, the reorganisation plan may set forth a lower ranking status for the insolvency creditors and a higher-ranking status for creditors whose claims arise from new loans or other credits granted during the implementation of the reorganisation plan of the debtor (Article 249). The maximum amount of such loans or other credits must be specifically defined in the reorganisation plan. The loan agreement to be concluded requires the prior approval of the insolvency practitioner.

The liabilities from the insolvency estate, other than the costs, are settled after the claims of the new creditors (Article 133). New creditors effectively have priority of payment before unsecured creditors.

Out-of-court settlement

There are no express provisions regulating new financing. However, the debtor could potentially obtain new financing with the approval of the creditors and the trustee.

Does the law recognise separate classes of creditors for voting purposes?

Reorganisation procedure

Yes, when defining the rights of the participants in the reorganisation plan, a distinction is made between creditors with the right to a separate settlement and creditors of a higher payment rank, if their rights are affected with the plan. The other creditors may be organised in groups according to their interests. The classes formed during the reorganisation plan will be respected during the voting process (Articles 220 and 232).

Out-of-court settlement

No, the Out-of-Court Restructuring Law does not recognise separate classes of creditors for voting purposes. Creditors vote as one group of unsecured creditors. Creditors with segregation rights (Article 40) and with a right to separate satisfaction (secured creditors according to Article 41) do not participate in any voting on the settlement agreement.

What are the majorities required to approve a reorganisation plan?

Reorganisation procedure

The adoption of a reorganisation plan requires a simple majority of the total amount of claims of the creditors present and a simple majority of all classes, unless a greater majority is required by the reorganisation plan (Article 232).

If the required majority was not achieved in the voting class comprised of creditors with segregation rights (secured creditors) such class will be deemed to have granted its consent if: the creditors that form such class do not suffer any losses or damages with the acceptance of the reorganisation plan, as compared to their situation without such a plan; and the creditors that form such group, to a reasonable extent, participated in the economic value allotted to the participants in accordance with the provisions of the reorganisation plan (Article 233).

Additionally, the reorganisation plan will be submitted for consideration and for an opinion to the board of creditors and to the employees' representatives (Article 225). The debtor has also the possibility to present objections to the plan after it has been voted (Article 234).

Out-of-court settlement

The plan for financial restructuring will be deemed to be accepted if it is approved by a simple majority in value of all determined claims (Article 47).

Creditors with segregation rights (Article 40) and with a right to separate satisfaction (secured creditors according to Article 41) do not vote. Secured creditors may only vote if they waive their right to separate satisfaction (Article 44).

Who does the reorganisation plan bind?

Reorganisation procedure

The court-approved reorganisation plan is binding on: all the participants; all parties involved in any manner in the reorganisation plan; and persons who have not reported their claims, as well as to the participants that voted against the proposed reorganisation plan provided the requisite majorities have been achieved (Article 239-1, 2, 3 and 4).

The reorganisation plan does not affect the right of creditors with segregation rights, i.e. secured creditors, unless otherwise specified in the plan (Article 221).

Out-of-court settlement

The out-of-court settlement procedure binds all participating creditors but does not affect creditors with segregation rights and creditors with the right to separate satisfaction, i.e. secured creditors (Article 54).

What is the timeframe for the reorganisation procedure and any moratorium?

Reorganisation procedure

There is no overall timeframe for the procedure. However, there are timeframes for specific actions during the procedure. The authorised entity for filing of the reorganisation plan is obliged to file the plan with the insolvency judge within 45 days as of the day of obtaining the authorisation. This deadline may be extended for 15 more days on request of an authorised entity and up to an additional 60 days on approval by a majority of two-thirds of the creditors' assembly (Article 216).

After receiving the reorganisation plan, the insolvency judge will submit it to the board of creditors and to the insolvency practitioner so that they may provide their opinion regarding the plan within 15 days from the date of submission (Article 225-2).

The insolvency judge will convene the creditors' assembly for discussion and voting upon the proposed reorganisation plan within three days following the date on which the deadline for inspecting the reorganisation plan expired (Article 228-1).

The creditors' assembly for discussion and voting upon the reorganisation plan must be held within a period from 21 days to 30 days following the convening of the creditors' assembly (Article 228-2). The timeframe for implementation of the reorganisation plan may not be longer than five years, subject to certain exceptions (Article 215-b).

The moratorium is available from the commencement of preliminary insolvency proceedings until the conclusion of the proceedings.

Out-of-court settlement

The out-of-court settlement procedure is urgent and must be completed within a maximum period of 120 days from the date of its initiation (Article 14). The settlement board must decide whether a procedure for out-of-court settlement should be initiated or not within eight days of the date of receipt of the debtor's proposal (Article 33).

The moratorium commences one day after the publication of the notice of commencement of the procedure until the end of the procedure.

The overall timeframe for implementation of the plan is prescribed by law. However, if a debt write-off is proposed, the percentage that the debtor proposes to the creditors for payment of their claims cannot be lower than 30 per cent if the payment is to be made within a period of four years, nor lower than 40 per cent if the payment is proposed to be made within a period of eight years (Article 31).

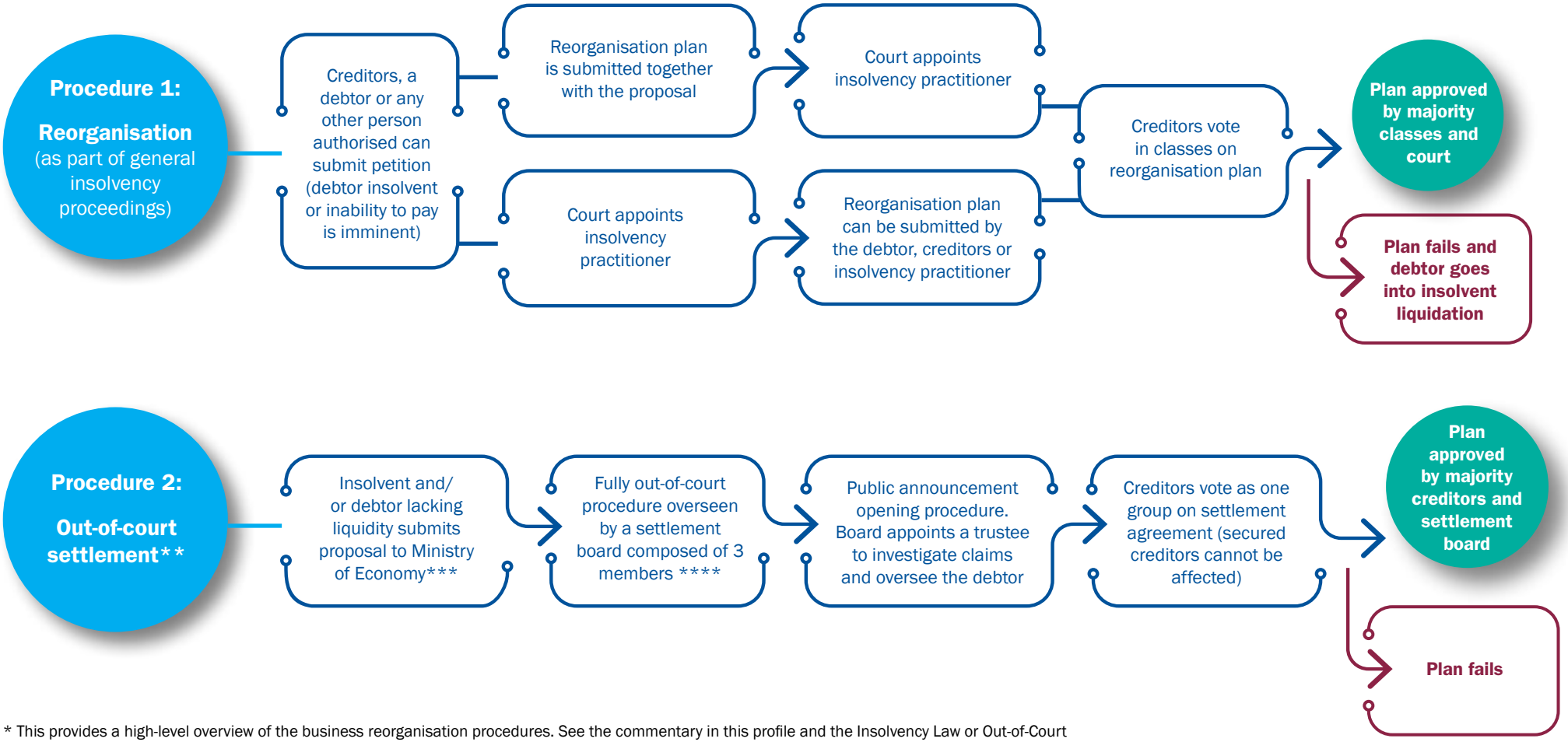
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, the UNCITRAL Model Law has not been adopted. However, the Insolvency Law contains provisions for the international jurisdiction of the courts of North Macedonia and for international cooperation of insolvency practitioners in the case of multinational insolvency proceedings.

Special features/observations:

- North Macedonia is among relatively few economies where we invest where there is a pre-negotiated reorganisation procedure that allows a company to present simultaneously with the petition for the opening of insolvency proceedings a plan that has been negotiated and agreed in principle with its main creditors. This is an option, not an obligation, as the plan can also submitted following the petition for insolvency.
- North Macedonia has implemented an e-bankruptcy system, administered by the **Central Registry of the Republic of Northern Macedonia (CRSM)** that enables electronic management of insolvency proceedings by insolvency practitioners and permits registered users of the e-bankruptcy system to view related documentation.

Overview of North Macedonian Business Reorganisation Procedures*



* This provides a high-level overview of the business reorganisation procedures. See the commentary in this profile and the Insolvency Law or Out-of-Court Restructuring Law, as applicable, for further details, including with respect to any applicable moratorium and creditor voting thresholds.

** An accelerated out-of-court settlement procedure is available for debtors with maximum claims of 1 million denar (approx. €16,000).

*** Fines can be imposed if the debtor does not initiate the procedure in a timely manner.

**** Members are appointed by the Ministry of Economy.

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