

35 No. 1 J. Bankr. L. & Prac. NL Art. 5

Norton Journal of Bankruptcy Law and Practice | Section updated October 19, 2026

Volume 35, Issue 1

Norton Journal of Bankruptcy Law and Practice

*Francesca Burigo, Oriana Casasola, Liam Faulkner, Andrew Kissner, and Erik Torjusen **

Between Leviathan and the Market: Restructuring the State-Owned Enterprise Beast

Keywords: State-Owned Enterprises (SOEs), Restructuring and Insolvency, State Aid and EU Law, Public Governance, Comparative Case Studies, Essential Services.

Abstract

State-owned enterprises (SOEs) occupy a structurally ambiguous position between public authority and market discipline, rendering their financial distress uniquely complex. This paper examines the regulatory frameworks governing SOE restructuring at the global and European Union levels and assesses how these models interact with insolvency law and practice, as well as with other public policy objectives. Through comparative case studies from diverse legal and economic contexts, the article examines how SOE distress is managed through a range of restructuring techniques.

By placing EU regulatory approaches alongside non-EU experiences, the article identifies transferable lessons and best practices for balancing creditor protection and the preservation of SOE's essential public functions. The analysis contributes to ongoing debates on the treatment of SOEs in insolvency and restructuring law by proposing a principled framework for managing the "enterprise-state" hybrid during financial crises.

1. Introduction

State-owned enterprises (SOEs) remain central actors in contemporary political economies, not simply as commercial undertakings but as vehicles for delivering public goods, stabilizing strategic markets, and advancing industrial policy.¹ Their hybrid character, operating simultaneously as commercial entities and extensions of the state, makes their financial distress especially challenging to regulate. In neoliberal economies, insolvency law traditionally presumes the neutrality of the state and the primacy of market discipline.² SOE restructuring disrupts both assumptions: the state is a dominant stakeholder whose decisions carry fiscal, political, and socio-economic implications; and the enterprise is embedded in public policy commitments that frequently resist the logic of ordinary corporate insolvency.

Although SOEs play a significant role in global production and investment, the legal and institutional mechanisms governing their restructuring remain uneven, fragmented, and often opaque. Some jurisdictions rely on general corporate insolvency regimes,³ while others create specialized administrative,⁴ or quasi-judicial processes.⁵ International bodies have not yet developed clear principles for state-related restructuring, and in the European Union, the matter is further complicated by the interaction with state aid rules, fiscal governance, and the Single Market.

This paper analyzes the global and EU regulatory frameworks for SOE restructurings, and the transferable lessons that can be drawn from comparative case studies in Europe and the Americas. By juxtaposing EU approaches with non-EU experiences, the article seeks to draw out cross-jurisdictional lessons to inform a principled framework for managing SOE distress. In doing so, it contributes to current debates in restructuring law, administrative governance, and public finance by reframing the distressed

SOE not merely as a struggling enterprise but as a hybrid public asset whose resolution implicates a wide constellation of economic and public interest considerations.

2. Theoretical and Regulatory Framework

2.1. A Global Overview of the State-Owned Enterprise Frameworks for Restructuring Purposes

At the international level, there is no single comprehensive framework that directly regulates or prescribes how state-owned enterprises should be restructured when they fall into financial distress. Instead, guidance on SOE's distress is dispersed across several bodies: the International Monetary Fund (IMF), the Organization for Economic Co-operation and Development (OECD), the United Nations Commission on International Trade Law (UNCITRAL), and the World Bank, which offers a Thematic Guidance Note on the topic. Each of these institutions approaches SOEs from a different angle, focusing on governance, fiscal risk, insolvency architecture, or public-sector performance. Together, these instruments form an embryonic soft-law framework for effective SOEs restructuring.

The IMF does not provide SOE-specific restructuring rules. Its involvement arises primarily when the SOE's financial distress creates sovereign fiscal risk or contributes to macroeconomic instability. IMF policies on debt sustainability, financing assurances, and sovereign debt restructuring indirectly shape the treatment of SOEs, especially when governments consider restructuring or guaranteeing SOE debt. The IMF's Guidance Note on Financing Assurances and *Sovereign Arrears Policies* outlines how debt-restructuring decisions must be aligned with efforts to restore medium-term sustainability.⁶ Although the guidance specifically excludes SOEs from the category of sovereign entity,⁷ these policies influence restructuring options when SOE liabilities are public or publicly guaranteed. The IMF's wider analytical work highlights that many SOEs are systemically non-performing: inefficient, financially risky, and exposed to corruption.⁸ For restructuring purposes, it is worth noting that this operational inefficiency may delay the response to financial distress until it reaches a non-viable point.

The OECD Guidelines on Corporate Governance of State-Owned Enterprises (2024) constitute the most authoritative international soft law instrument governing SOEs' ownership, oversight, and governance.⁹ Although the Guidelines do not prescribe specific restructuring procedures, they establish the foundational governance conditions under which SOEs are less likely to deteriorate into financial distress requiring restructuring. The 2024 revision strengthens earlier editions by emphasizing professionalized state ownership, clear rationales for holding enterprises in state hands, and the separation of the state's ownership function from its regulatory and policy-making roles.¹⁰ The Guidelines also reinforce the need for high standards of transparency, disclosure, and accountability, ensuring that SOEs operate under governance practices comparable to those of well-run private firms.¹¹ They promote competitive neutrality and call for strong, independent, merit-based boards capable of exercising strategic oversight and resisting political interference.¹²

A major innovation in the 2024 update is the integration of sustainability and responsible business conduct into the governance framework. The Guidelines now expect states to set clear sustainability-related expectations for SOEs and for SOE boards to incorporate climate, environmental, social, and long-term value-creation considerations into strategy, risk management, and reporting. Enhanced sustainability disclosure, aligned with internationally recognized standards, is encouraged to promote consistency and accountability across jurisdictions.¹³ Overall, the Guidelines function as a *preventive governance framework*: by improving ownership practices, transparency, and board effectiveness, they help reduce the likelihood of SOE underperformance or financial distress.

Finally, the World Bank's *Integrated State-Owned Enterprise Framework* (iSOEF) guidance note sets out a structured, three-step approach for restructuring SOEs when governments intend to retain them in public ownership.¹⁴

First, in a rigorous diagnostic phase, the government must assess the SOE's position within its broader economic and institutional context. This diagnosis should encompass an evaluation of the sectoral environment, including applicable government policies, market structure, and competitive dynamics, as well as the legal and institutional framework governing the SOE. It must also critically assess the SOE's mandate and objectives, examining whether they remain appropriate and aligned with current policy priorities and market conditions.

At the firm level, the diagnostic process should incorporate both financial and operational assessments. The financial analysis should consider key indicators such as liquidity, solvency, accumulated arrears, and debt structure to evaluate the enterprise's overall financial sustainability. Simultaneously, an operational assessment should examine efficiency, technological capacity, organisational structure, internal controls, management capability, and relevant sector-specific performance indicators, with a view to identifying structural weaknesses or inefficiencies.

The diagnostic exercise must also extend to the public finance dimension, evaluating the extent of explicit subsidies and implicit state support, including tax arrears or guaranteed liabilities, as well as the scale of contingent liabilities that may crystallise into fiscal obligations. A banking sector assessment should review the capacity of national banks to absorb loan restructurings or write-offs, the risk of systemic instability, and the extent of cross-exposures between financial institutions and SOEs.¹⁵

Second, a restructuring plan should be drafted. The guidance note highlights that the success of SOE restructuring is contingent on a careful balance between policy, operational, and financial measures. Financial restructuring without operational reform will not be sustainable, while operational restructuring alone cannot rescue an SOE with an unmanageable debt burden. Measures to restore cost recovery, such as tariff adjustments or the proper budgeting of public service obligations, must balance commercial viability with fiscal responsibility and affordability. Similarly, decisions about debt write-offs or conversions must consider not only the SOE's solvency but also banking sector resilience; aggressive restructuring can jeopardize financial stability if banks are under-provisioned or heavily exposed.¹⁶

The World Bank's Annex 7 serves as a comprehensive blueprint for governments preparing an SOE restructuring plan. It outlines all components required to understand the SOE's context, diagnose its problems, identify restructuring options, justify the chosen approach, and articulate the operational and financial roadmap for returning the SOE to long-term viability.¹⁷

Third, the resulting restructuring plan should be implemented. This should combine financial restructuring with operational and organizational reforms, for example, changes to business models, strengthening governance, workforce optimization, technology upgrades, and unbundling or corporatization where appropriate. It also should incorporate regulatory and policy reform, especially in public utilities, alongside social mitigation measures for labor transitions.

The World Bank stresses the benefits of centralized ownership entities or dedicated restructuring agencies for coordinating reforms and separating ownership from sectoral policymaking. Yet ontologically and in practice, SOEs operate at the intersection of commercial activity and national policy, and their restructuring often requires political decisions that go beyond purely technical analyses. Whether in tariff reform, workforce downsizing, navigating entrenched interests, or redefining the scope of state ownership, the political salience of SOEs means that governments cannot exclude political judgment from restructuring decisions. The World Bank's aspiration to separate ownership from policymaking provides an important governance benchmark, but the realities of state ownership mean that political considerations inevitably shape restructuring trajectories, sequencing, and feasibility.

Ultimately, SOEs in financial distress face a spectrum of potential interventions, ranging from increased state ownership or full nationalization at one end, to partial or full privatization at the other. Between these poles lies a wide spectrum of restructuring options, reflecting varying degrees of state involvement, market discipline, and institutional capacity. The choice among these pathways is inherently normative, requiring a careful balancing of fiscal sustainability, economic efficiency, and public policy objectives. The absence of a coherent international framework governing state-related restructuring highlights a significant gap in the global financial architecture. Greater attention should therefore be directed towards developing more consistent international principles to guide these processes.

2.2. The European Lens: How EU Law Shapes SOE Restructuring

In line with the global level, the European legal framework does not provide a uniform model either. Nevertheless, there are several fixed reference points useful to address the restructuring of SOEs.

On the one hand, Art. 345 of the Treaty on the Functioning of the European Union provides for the Union's neutrality regarding ownership of public or private enterprises.¹⁸ At the same time, the EU exercises a powerful influence through three regulatory pillars: (i) State aid control, (ii) Competition law, and (iii) Public procurement and transparency rules, especially towards publicly controlled entities.

State aid control is the core of the EU's oversight of SOEs. The European Commission is entrusted with safeguarding the functioning of the internal market and, with regard to SOEs, its scrutiny focuses on these entities' competition with private undertakings. Article 107 TFEU prohibits State aid that favors certain undertakings or the production of certain goods, distorts competition, and affects trade between Member States.¹⁹

The risk of public interference in SOEs is structurally significant; accordingly, the Commission has established a set of control mechanisms. For example, the prior notification of State aid under Article 108 TFEU enables the Commission to assess the selectivity of the measure, the existence of an economic advantage, its imputability to the State, and its compatibility with the internal market.²⁰ In addition, the Market Economy Investor Principle (MEIP) allows the Commission to verify whether the State's conduct corresponds to that of a private investor operating in a market economy.²¹

The most sensitive and concealed situations concern implicit State guarantees, which may materialize in lower interest rates, facilitated access to credit, or artificially elevated credit ratings; preferential financing granted at below-market rates, on terms more favorable than those available to a comparable private undertaking, or involving a level of risk that a private investor would not accept; and recapitalizations that do not occur under market conditions, namely where no private investor would have participated, where no credible industrial plan exists, or where the expected return is not comparable to market benchmarks.²²

However, exceptions are provided for economic activities that Member States consider essential to the community but that the market alone would not be able to provide adequately, such as local public transport, universal postal services, energy supply in remote areas, and territorial continuity on certain air or maritime routes. The solution envisaged by the EU legislator is to compensate the undertaking, whether public or private, entrusted with providing these services, for the additional costs arising from public service obligations. To prevent compensation from being granted in situations that fall outside this area of necessity, four cumulative requirements have been identified which, if satisfied, allow the compensation to be excluded from the scope of State aid under Article 107 TFEU.²³

First, the undertaking must receive a formal mandate to provide a service of general economic interest through a clear act, such as a statute, contract, concession, or administrative decision, thereby excluding all *de facto* situations. *Second*, the parameters for calculating the compensation must be transparent, objective, and established *ex ante*, so as to avoid discretion or hidden advantages. *Third*, the compensation must be limited to the net costs of the service, including a reasonable profit margin and excluding any form of overcompensation. *Finally*, the undertaking must have been selected through a public procurement procedure, or the compensation must be calculated on the basis of the costs of a typical, well-run, and adequately equipped undertaking.²⁴

Once the specific features of State aid control have been identified, attention must turn to the second pillar of the European regulatory framework: the body of antitrust rules applicable to SOEs. In particular, the relevant provisions are Articles 101 and 102 TFEU, on agreements and abuse of dominant position, read in conjunction with Article 106 TFEU, which links those rules to public undertakings and undertakings entrusted with special or exclusive rights. The crucial point is that, save for limited derogations in respect of services of general economic interest, SOEs are fully subject to competition law.

Article 106 TFEU addresses State conduct that creates or protects privileged positions and entrusts the Commission with the task of monitoring their application. Although publicly owned, SOEs are undertakings in every respect and may therefore be parties to restrictive agreements or abuse a dominant position by exploiting exclusive rights, enjoying privileged access to infrastructure, or benefiting from vertical integration facilitated by national legislation. What is at stake is not only the conduct of the undertaking, but also the institutional configuration that the State constructs around the SOE: the exercise of regulatory powers may not be used to create regulatory advantages that render abuse inevitable or structurally embedded.

To render antitrust control over SOEs effective, the European Commission has relied on enhanced transparency of financial relations between the State and public undertakings, most notably through the Transparency Directive,²⁵ and on accounting separation and structural unbundling between natural monopoly activities and activities carried out under competitive conditions.

The third pillar of the European regulation of SOEs concerns public procurement, transparency, governance, and accountability, which serve as structural safeguards ensuring that public undertakings operate in line with the principles of the internal market. While State aid control prevents selective advantages and competition law constrains both market conduct and State-created privileges, this pillar focuses on the institutional architecture within which SOEs operate.

Because the State often acts simultaneously as a regulator and a market participant, the EU requires a clear separation of roles and full visibility into financial flows to prevent cross-subsidization, hidden advantages, or distortions of competition. The central instrument is the Transparency Directive, which mandates transparency in financial relations between public authorities and SOEs and requires the accounting separation of monopoly activities from competitive ones.²⁶

Beyond financial disclosure, SOEs must adopt governance standards comparable to private undertaking professional independence, managerial autonomy, and clear internal controls—reflecting the influence of the OECD Guidelines on the Corporate Governance of SOEs. Accountability complements transparency by ensuring that decision-making responsibilities are identifiable and that public ownership does not dilute oversight.

Together, these mechanisms ensure that SOEs operate efficiently, competitively and in a manner consistent with competitive neutrality, completing the structural framework established by the first two pillars.

3. Case Studies

In practice, the procedural framework for restructuring a given SOE often depends on which law governs its debt. Where an SOE's debt is governed by local law, then it is typical for the SOE to be restructured under ordinary domestic insolvency laws in a manner not dissimilar to a private enterprise. Where the debt at issue is governed by foreign law, however, as may be the case with, for example, international sovereign bonds, then there is often no formal insolvency regime applicable, and the framework will more closely resemble a sovereign restructuring, which is typically achieved on an *ad hoc*, out-of-court basis.

This section presents four case studies that illustrate the range of frameworks and potential outcomes: (1) the Puerto Rico Electric Power Authority (“PREPA”); (2) the State Agency of Automobile Roads of Ukraine (“Ukravtodor”); (3) Norsk Bibliotektransport (“NBT”); and (4) Alitalia—Società Aerea Italiana S.p.A. (“Alitalia”).

3.1. Puerto Rico—PREPA

In 2014, three major rating agencies downgraded debt issued by Puerto Rico, an unincorporated territory of the United States, to “junk” status, triggering a broad debt crisis.²⁷ In addition to billions of dollars in “general obligation” debt issued by the central government, as well as billions more in off-balance sheet conduit financing, Puerto Rico had numerous SOEs, known as “public corporations”, including the highway authority (“HTA”), building authority (“PBA”), and power authority, with tens of billions of dollars of debt.²⁸

The public corporations’ debt largely took the form of tax-exempt municipal bonds. Because the debt was governed by U.S. law, generally the law of either New York or Puerto Rico, and dollar-denominated, it could theoretically be restructured under the U.S. Bankruptcy Code. However, due to historical technicalities in the U.S. bankruptcy statute, Puerto Rico, its public corporations, and other political subdivisions were ineligible to seek relief under the Bankruptcy Code.²⁹ After the U.S. Supreme Court struck down a territorial insolvency law passed by the Puerto Rico legislature as unconstitutional, in 2016, the U.S. Congress passed the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (PROMESA)³⁰ that closely mirrored Chapter 9 of the U.S. Bankruptcy Code, the section of the Bankruptcy Code governing the restructuring of municipalities and certain SOEs.

HTA, PBA, and other SOEs were resolved through largely consensual restructuring plans approved between 2018 and 2023. However, Puerto Rico Electric Power Authority (PREPA) has lingered in bankruptcy since 2017, with many observers believing there to be no end in sight.

Steps have been taken by the Puerto Rico government and the Financial Oversight and Management Board, the fiscal control board created under PROMESA to oversee the restructurings, to restructure PREPA’s operations over the years, including the privatization of PREPA’s generation and transmission operations. The financial restructuring of PREPA’s debt, however, has remained stalled because, among other things, the debtor and creditors have long been at an impasse regarding the proper

financial and electric consumption projections for PREPA and Puerto Rico, as well as the corresponding amount of debt that PREPA can sustainably service going forward.

Although the reason for PREPA's woes are manifold, two factors unique to SOE restructurings under U.S. law, whether under Chapter 9 of the Bankruptcy Code or PROMESA, have contributed to this "gridlock": (1) under PROMESA, the debtor has unlimited exclusivity to propose a plan, i.e., creditors cannot propose their own plan; and (2) there is no "liquidation alternative", i.e., if the debtor does not propose an acceptable plan of reorganization, creditors cannot force it to liquidate.

So while if PREPA were a privately owned business seeking to restructure under Chapter 11 of the Bankruptcy Code, creditors could have long ago sought to propose their own plan of reorganization or forced the debtor into a Chapter 7 liquidation, here PREPA's bondholders have no ability to do so for so long as PREPA's case under PROMESA remains pending and the corresponding automatic stay remains in effect.³¹

3.2. Ukraine—Ukravtodor

Ukravtodor is the state highway authority for Ukraine. In addition to local law, hryvnia-denominated debt, Ukravtodor also had USD 700 million of dollar-denominated bonds issued via international capital markets and governed under English law. These bonds were also guaranteed by the Ukrainian central government, which guarantee ranked *pari passu* with Ukraine's international sovereign bond debt.

Because the bonds were governed by English law, they could not be compromised or otherwise restructured under domestic Ukrainian insolvency law. Accordingly, any restructuring of the bonds issued by Ukravtodor, or other Ukrainian SOEs like the state energy company, Ukrenergo, would more closely resemble an ordinary sovereign bond restructuring than a typical, private sector insolvency proceeding. For example, there would be no centralized court overseeing the proceedings, no generalized moratorium or automatic stay of enforcement actions except as might be imposed by specific legislative act or executive order, and no "cram down" of dissenting creditors or classes except as may be contractually provided under the bond documents, e.g., through collective action clauses.

After the Russian invasion of Ukraine in 2022 left the Ukrainian government with diminished resources to service its international bond debt, Ukraine pursued a restructuring of Ukravtodor's debt in parallel with that of Ukraine's sovereign bonds. In late 2022, Ukraine obtained via consent solicitation a two-year extension of maturities and debt service deferral from its sovereign bondholders, GDP warrant-holders,³² and certain SOE debtholders, including holders of the Ukravtodor international bonds.

Over the next several years, negotiations on the terms of a more holistic restructuring proceeded. In 2024, Ukraine reached an agreement with its sovereign bondholders and holders of Ukravtodor bonds for a debt restructuring involving a substantial haircut on principal and an exchange into two new debt instruments, which was executed via consensual exchange offer.

3.3. Norway—Norsk Bibliotektransport

Norsk Bibliotektransport, which literally translates to Norwegian Library Transport, began in 2002 as a specialist carrier for books and other library materials within Norway's interlibrary loan system, but over time it developed into a much larger logistics business. It was wholly owned by Biblioteksentralen, a cooperative owned mainly by Norwegian municipalities and county authorities, so the company had an indirect but clear public ownership profile. By the time it failed, NBT was a nationwide operator with around 150 employees, 16 terminals from Kristiansand in the south to Tromsø in the north, automated 3PL warehouses at Kløfta and Larvik, and more than 90 daily routes. NBT also adopted a distinctly green operating model. By autumn 2022, nearly 100 vans had been electrified, and those vehicles were used in a distribution network stretching over 2000 kilometres from south to north. In a country defined by long distances, sparse routes and demanding winter conditions, charging stops could not always be treated as a minor operational detail in the way they might be in short-haul urban transport. At the same time, NBT was no longer limited to moving books for libraries; it had expanded into broader commercial transport, warehousing and third-party logistics.

That combination of public-service origin and commercial expansion is central to the case. NBT's original function was to sustain the practical infrastructure for nationwide access to books, premised on the simple idea that readers should be able to borrow a book regardless of which library in the country held it. That occasionally meant sending a van across the country

with only a handful of books on board. Such luxuries could not be afforded when NBT's business expanded, and it had to compete in the ordinary logistics markets. The company invested heavily in terminals, warehouses and sorting technology, adding substantial obligations and commitments to a logistics company with pressed margins and tight liquidity.

The expansion was made possible by the willingness of NBT's immediate parent, Biblioteksentralen, to provide guarantees for NBT's commitments. When NBT's liquidity crisis materialized, the ultimate public owners were not simply deciding whether to inject new money into an already troubled subsidiary. They were also faced with the classic dilemma of whether to continue to fund NBT in the hope that operational performance would improve, rather than seeing all guarantee liabilities crystallize in a liquidation proceeding. Choosing the former alternative, NBT sought court-supervised reconstruction in January 2026. As the matter progressed, it became clear that the funding requirement exceeded what the owners were willing to contribute, and NBT filed for bankruptcy, by way of liquidation proceedings, in April 2026.

State aid legislation also played a key part in the efforts to restructure NBT. One of NBT's competitors complained to EFTA³³ surveillance authority (ESA), alleging that support from the publicly owned parent, including guarantees, loans and group contributions, or in other reporting interest-free loans, could have conferred an advantage in competition with private logistics firms. As NBT went into bankruptcy, this is now a question mainly of theoretical interest. However, had ESA decided that Biblioteksentralen's financial assistance to NBT constituted state aid, the resulting restitution claims would further have added to NBT's challenges, as such restitution claims could not necessarily be compromised in the reconstruction proceedings.

3.4. Italy—Alitalia

Alitalia, Italy's former flag carrier, experienced a prolonged period of financial distress spanning more than two decades. Although privatized in 2009, the airline remained closely tied to the Italian state through repeated public interventions aimed at preserving essential air transport services, employment, and national connectivity. Throughout this period, Alitalia accumulated persistent operating losses, structural inefficiencies, and growing indebtedness, which ultimately led to its placement into Italy's Extraordinary Administration (EA) procedure in 2017.

Unlike an ordinary corporate insolvency process, EA is designed specifically for large enterprises of strategic importance. It allows operations to continue under government-appointed commissioners while efforts are made to restructure or sell the business. In Alitalia's case, EA enabled the airline to continue operating for several years despite its insolvency, with the objective of maintaining uninterrupted air services while identifying a viable long-term solution. During this period, the Italian government provided various forms of financial support, including bridge loans and liquidity measures, to sustain operations.

These interventions, however, were subject to strict scrutiny under EU State aid rules. Successive measures adopted by the Italian authorities triggered a review under Articles 107 and 108 TFEU,³⁴ reflecting the tension between the public interest in maintaining essential services and the need to preserve competition within the internal market. As in other SOE contexts, the availability of public support extended Alitalia's operational life but also delayed a definitive restructuring outcome, contributing to a cycle of repeated interim solutions rather than a comprehensive resolution.

Over time, it became clear that Alitalia's financial and operational difficulties could not be resolved within the existing corporate structure. After several unsuccessful attempts to restructure or sell the business during the EA proceedings, Italy ultimately pursued a more structural solution. In 2021, a new airline, ITA Airways, was established as a legally and economically distinct entity. The transfer of selected assets and operations from Alitalia to ITA was carefully structured to comply with EU State aid rules, in particular the requirement that there be no "economic continuity" between the two entities.

Following this separation, ITA commenced operations as a new carrier without assuming Alitalia's historical liabilities, effectively bringing the long-running restructuring process to a close. This outcome illustrates a distinct pathway for resolving SOE distress in the European context, where regulatory constraints may necessitate not the reorganization of the existing entity but the creation of a successor free from legacy obligations.

Alitalia thus provides a clear example of how the interaction between public ownership, State aid law, and insolvency frameworks can shape the restructuring options available to distressed SOEs. While EA ensured continuity of essential services, it also demonstrated the limits of insolvency tools where political considerations and regulatory constraints prevent a timely and comprehensive restructuring, ultimately requiring a more radical structural break.

4. Lessons Learned: Transferable Best Practices from the Above Analysis

The comparative assessment of international guidance, the EU regulatory framework, and jurisdiction-specific case studies indicates that effective SOE restructuring depends on a careful balance among institutional discipline, market-oriented tools, and politically workable governance arrangements. Despite the diversity of legal and economic contexts in which SOEs operate, several broadly applicable lessons can be identified.

Successful restructuring consistently begins with a thorough and multidimensional diagnostic phase that examines financial conditions alongside operational performance, governance structures, and public policy objectives. Evidence from multiple jurisdictions shows that restructuring efforts are likely to fail when financial interventions are pursued in isolation, without addressing underlying inefficiencies, outdated mandates, or governance weaknesses. Delays in conducting such diagnostics, often driven by political hesitation, tend to exacerbate financial distress and limit the viability of market-based solutions. By contrast, rapid and coordinated assessments, particularly in crisis contexts, can support timely and credible interventions. Accordingly, restructuring strategies should be grounded in a comprehensive evaluation of mandate relevance, financial sustainability, contingent liabilities, and sector dynamics, with findings presented transparently to build trust among stakeholders.

Another key lesson is the importance of aligning restructuring tools with market discipline and the principle of competitive neutrality. The EU experience demonstrates that public intervention in SOE restructuring must remain consistent with market logic, ensuring that state support does not distort competition. Mechanisms such as state aid control and investor-based benchmarks illustrate how public authorities can emulate private sector behaviour when allocating resources. Comparable dynamics are observable outside the EU, where structured frameworks that protect creditors and constrain discretionary intervention tend to produce more disciplined outcomes. As a result, best practice requires that public support be transparent, proportionate, and structured in ways that minimise competitive distortions while preserving incentives for efficiency.

A further recurring insight concerns the need to clearly separate the State's roles as owner, regulator, and policymaker. Where these functions overlap, restructuring processes are often undermined by conflicts of interest, weakened accountability, and susceptibility to political interference. International and EU frameworks consistently emphasise the benefits of professionalised ownership arrangements and institutional separation, which enhance transparency and reduce the risk of cross-subsidisation. Experience shows that blurred boundaries between industrial policy objectives and ownership decisions can prolong crises and erode credibility. Effective restructuring therefore depends on the establishment of independent and professionally staffed entities with clearly defined mandates and accountability structures.

The evidence also makes clear that financial restructuring alone is insufficient to ensure long-term viability. Sustainable outcomes require a parallel focus on operational improvements and governance reform. Debt restructuring, recapitalisation, or asset disposals can provide immediate relief, but without accompanying changes to business models, efficiency levels, and oversight mechanisms, such measures merely defer underlying problems. Case studies suggest that successful restructurings combine financial measures with operational adjustments, such as workforce optimisation and technological modernisation, and governance reforms, including stronger boards, enhanced controls, and greater transparency. In some instances, creating a new operating entity has been effective, provided it is accompanied by a fundamental redesign of governance and strategy.

Procedural predictability and meaningful creditor engagement are equally critical to effective restructuring. Processes that lack clear rules, defined timelines, or balanced negotiation dynamics often become protracted and produce suboptimal outcomes. Experience demonstrates that when either the State or creditors can unilaterally dominate proceedings, incentives for compromise diminish. Conversely, structured engagement mechanisms, such as formal negotiation frameworks or clearly defined creditor rights, help facilitate cooperative and timely resolutions. Predictable procedures not only improve efficiency but also enhance credibility, encouraging participation and reducing litigation risks.

Finally, SOE restructuring must carefully balance the preservation of essential public services with the need to maintain fiscal sustainability. Many SOEs are responsible for delivering critical infrastructure and services, making their restructuring both economically and politically sensitive. Frameworks that clearly define and cost public service obligations provide a useful model for reconciling these competing objectives. However, experience shows that poorly defined or open-ended commitments can undermine fiscal discipline and prolong inefficiencies. Best practice, therefore, requires that public interest considerations be explicitly articulated, transparently funded, and subject to periodic review, ensuring that service continuity does not come at the expense of long-term sustainability.

5. Conclusion

The case studies illustrate how restructuring State-Owned Enterprises requires navigating the space between Leviathan and the market, where public mandates and market discipline intersect.

Taken together, the foregoing case studies underscore that effective restructuring of state-owned enterprises (SOEs) cannot be achieved through isolated legal or financial tools. Rather, it requires a principled and multi-layered framework that combines diagnostic clarity with carefully calibrated, market-compatible interventions. Central to this approach is the institutional separation between the State's roles as owner, regulator, and creditor, supported by meaningful governance and operational reforms that address the underlying causes of distress.

At the same time, restructuring frameworks must provide predictable procedures capable of balancing creditor rights with the continuity of essential services. This includes embedding appropriate safeguards for the public interest without distorting competitive conditions or entrenching inefficient market structures. Equally important is an awareness of the political economy surrounding SOEs, where strategic, social, and symbolic considerations often shape outcomes as much as legal and financial constraints.

Westlaw. © 2026 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- * Francesca Burigo is a Researcher in Commercial Law, Università eCampus (Italy); Oriana Casasola is an Associate Professor in Commercial Corporate and Banking Law at the University of Leeds (UK); Liam Faulkner is a Partner at Cambells Legal; Andrew Kissner is Restructuring Counsel at MoFo Morrison & Foerster; Erik Torjusen is at Kvale advokatfirma DA; The authors contributed to this article as follows. Francesca Burigo authored Sections 2.2 and 3.4. Oriana Casasola authored Sections 1 and 2.1. Andrew Kissner authored Sections 3, 3.1 and 3.2. Erik Torjusen authored Section 3.3. Francesca Burigo and Oriana Casasola jointly drafted Sections 4 and 5. All authors contributed to the conceptual development of the article, participated in the comparative analysis, and approved the final manuscript.
- 1 International Monetary Fund, 'State-Owned Enterprises: The Other Government' in Fiscal Monitor: Policies to Support People During the COVID 19 Pandemic (IMF 2020) ch 3.
- 2 Emilie Ghio, John M Wood and Jennifer L L Gant, 'Introduction: Insolvency Theory for a New Age' in Emilie Ghio, John M Wood and Jennifer L L Gant (eds), Research Handbook on Insolvency Law and Theory (Edward Elgar Publishing 2022).
- 3 See in Uk, Re Sino?Ocean Group Holding Ltd [2025] EWHC (Ch) (High Court, 3 February 2025).
- 4 See in Italy, Legislative Decree No 270, 8 July 1999 (*Nuova disciplina dell'amministrazione straordinaria delle grandi imprese in stato di insolvenza*); Decree-Law No 347, 23 December 2003, converted into Law No 39, 18 February 2004 (Marzano Law).
- 5 Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Pub L No 114 187, 130 Stat 549 (2016).
- 6 International Monetary Fund, *Guidance Note on the Fund's Financing Assurances and Sovereign Arrears Policies*.
- 7 Ibid 17.
- 8 IMF, *supra* note 1.

- 9 Organisation for Economic Co-operation and Development, ‘*OECD Guidelines on Corporate Governance of State Owned Enterprises*’ (OECD Publishing 2024).
- 10 Ibid 14.
- 11 Ibid 19.
- 12 Ibid 21.
- 13 Ibid 23.
- 14 World Bank, ‘*Integrated State Owned Enterprises Framework (iSOEF)*’ (World Bank Group).
- 15 Ibid 4.
- 16 Ibid 13.
- 17 Ibid Annex 7.
- 18 Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C202/47, art 345.
- 19 Ibid Article 107.
- 20 Ibid Article 108.
- 21 European Commission, ‘Commission Notice on the notion of State aid as referred to in Article 107(1) of the TFEU’ [2016] OJ C262/1, paras 73–77.
- 22 Ibid, paras 14–17, 66–77. See, eg, Case C 124/10 P *Commission v EDF* [2012] ECLI:EU:C:2012:318 (implicit State guarantees and the MEIP); Joined Cases C 83/01 P, C 93/01 P and C 94/01 P *Chronopost* [2003] ECLI:EU:C:2003:388 (preferential financing and below market terms); Case C 482/99 *France v Commission (Stardust Marine)* [2002] ECLI:EU:C:2002:294 (recapitalisations and the private investor test).
- 23 European Commission, ‘Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU’ [2016] OJ C262/1, paras 48–52.
- 24 Case C 280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECLI:EU:C:2003:415, paras 87–95.
- 25 Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings and on financial transparency within certain undertakings [2006] OJ L 318/17 (as amended).
- 26 Ibid.
- 27 Fitch Cuts Puerto Rico’s Debt to Junk, N.Y. Times (Feb. 11, 2014), <https://archive.nytimes.com/dealbook.nytimes.com/2014/02/11/fitch-cuts-puerto-ricos-debt-to-junk/>.
- 28 Puerto Rico Oversight, Mgmt. & Econ. Stability Act Oversight Bd., Debt, <https://oversightboard.pr.gov/debt/>
- 29 *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115 (2016).
- 30 Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Pub. L. No. 114-187, 130 Stat. 549 (2016).
- 31 Compare 11 U.S.C. § § 1112(b)(1) (creditor may seek conversion of chapter 11 reorganization to chapter 7 liquidation for cause), 1121(d)(2)(A) (chapter 11 debtor’s exclusive period to file a plan cannot be extended more than 18 months after bankruptcy petition date) with 48 U.S.C. § § 2161(a) (Bankruptcy

Code provisions permitting conversion to liquidation not incorporated into PROMESA), 2172(a) (only the Oversight Board may file a plan under PROMESA).

32 As part of its 2015 sovereign debt restructuring following the Euromaidan, Ukraine issued contingent value instruments colloquially referred to as “GDP warrants” that would pay additional amounts to creditors in the event Ukraine’s economy outperformed expectations, measured by comparing GDP growth to a set of pre-determined thresholds.

33 European Free Trade Association.

34 E.g. Commission Decision (EU) 2022/795 of Sept. 10, 2021 on State Aid SA.48171 (2018/C) (ex 2018/NN, ex 2017/FC) Implemented by Italy, 2022 O.J. (L 141), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0795>.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.