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The implementation of the new Law of Bankruptcy in Albania

Erjola Xhuvani

Department of Economics, Faculty of Economics and management Sciences, University of Bamenda, Cameroon

* Corresponding Author: **Erjola Xhuvani**

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Abstract

Societies face many challenges during their existence. These challenges can be internal, such as poor management, liquidity problems, etc., or external, such as changes in market trends, wars, pandemics, regulations that limit or challenge the industry in which the business operates, the growth of competition or macroeconomic difficulties (ie currency devaluation), etc. Sometimes, some of the above-mentioned situations can put a company in financial troubles. When financial or economic difficulties affect a debtor and e place him in the situation of insolvency, the debtor himself or his creditors may refer to the official bankruptcy court procedures, regulated by the Law on Bankrupt. This article provides an overview of the implementation of the new bankruptcy law and compares it with the old law. In the second part of the particle is made a description of the adjustments made by the new bankruptcy law in favour of the well-functioning of the companies in Albania.

Keywords: law on bankruptcy, law implementation, creditor, debtor, administrator, National Bankruptcy Agency

1. Introduction

1.1. Analysis of the objectives and implementation of the LB in comparison with the old law of bankruptcy 8901/2002

On May 22, 2017, the new Law on Bankruptcy entered into force. The aim of this law was to regulate bankruptcy procedures both for debtors, natural persons and legal persons ^[1]. One of main the objectives of bankruptcy proceedings is to enable the debtor and his creditors to find a collective solution regarding the debtor's inability to repay in full his creditors or, conversely, to liquidate the debtor's assets and distribute them the income from them. After the initiation of these procedures, the Law on Bankrupt contains binding rules material and procedural for how creditors and their common debtor must work together to find a solution for the insolvency itself. The LB states that the main purpose of a bankruptcy procedure is to collect dismissal of the debtor's obligations through reorganization of the activity or liquidation of all assets of the debtor and distribution of income. The old bankruptcy law was considered too complex and difficult to apply effectively in practice. This was proven after the global financial crisis, when despite bad credits ratio of around 25%, there were limited cases of bankruptcy, other than those initiated by the tax authority, usually against companies that had insufficient assets to cover the cost of the process. As a result, the old system was not widely used, and in those cases where it was used, there was little opportunity for it to maintain business value ^[2]. The Law on Bankrupt was designed to provide a more predictable system that creates a better balance between the rights of debtors and creditors in the judicial procedures in particular in relation to reorganization and liquidation procedures, remuneration of administrators, debt restructuring and other issues.

One of the main issues during the years of implementing the old law was a misunderstanding created by the law of tax procedures. In those years, the main reasons for the beginning of the bankruptcy proceedings was the lack of commercial activity for more than two years, a "passive" registration status at the National Business Centre for more than two years, declaration of capital loss for more than three years, etc. The old law of bankruptcy related the bankruptcy to insolvency or debt overloads, while the tax law linked bankruptcy with the negative financial situation of the business, which created ambiguity in the interpretation. The tax authorities did not act in compliance with bankruptcy law.

¹ https://www.drejtesia.gov.al/wp-content/uploads/2017/11/Relacioni_PER_FALIMENTIMIN.pdf

² Report of the new Bankruptcy law published by the Parliament

In fact, "about 85%" of bankruptcy cases in 2013 were initiated by the tax authorities for reasons that did not strictly stem from the law for bankruptcy. Most of them were rejected due to insufficient assets to cover the costs of the process.

The Law on Bankrupt reformed this approach. The Law stated that the procedures included in it remain above those compared to other bankruptcy-related procedures provided by other laws. More precisely, the Law on Bankrupt provided that upon its entry into force, Article 104 of the Law of tax procedures should be abolished. To fulfil this requirement of the Law, article 104 of the Tax Procedures Law was repealed in November 2016. This legal intervention does not oblige the tax administration to request the opening of bankruptcy procedures.

The limited experience and lack of proper training of administrators, was of concern under the old law. Furthermore, the status of administrators in compliance with the old law, in terms of payment, term of appointment, monitoring, proper formation, role with the parties in the bankruptcy process, etc., had created confusion for the administrators themselves and the parties. Therefore, the status and especially the payment procedures of administrators were considered a weakness of the old law. The LB has tried to address most of the issues in order to establish clear rules for the appointment of temporary and permanent administrators and supervisor mechanisms for the National Bankruptcy Agency.

The system established under the old law tended to favour liquidation as a loss of reorganization. As the statistics of the courts have shown, the parties and consequently the courts always addressed the process towards liquidations, which was not the main goal of the old law. Furthermore, the old law did not contain adequate regulations regarding restructuring of the debt. In addition to the clear separation of reorganization and liquidation procedures, the Law of Bankrupt introduced new mechanisms aimed at increasing the possibilities of saving businesses in difficult situation by introducing new ways of reorganization and restructuring of the debtor's debts. One of the main features of LB is the presentation of acceleration of reorganization. Accordingly, the debtor and creditors may reach an agreement out of court which must then be approved by the court. This quick reorganization procedure is thought to make work easier of the court as well as to reduce the costs attached to the bankruptcy procedures, by ultimately leading to the preservation of business value.

2. Actions performed by people to avoid bankruptcy proceedings

Bankruptcy proceedings are not the preferred way to get out of debt. On the contrary, they are often the last resort after all other options have failed. In many cases debtors will be able to avoid formal bankruptcy procedures as well if they are unable to pay, if they reach an agreement with their creditors. Also if the bona fide attempt at private restructuring fails, bankruptcy proceedings are often more likely to be successful if initiated after such efforts. Furthermore, a competent court is more likely to support the debtor down the long road and with obstacles during the procedures. Consequently, debtors are advised to take all steps as soon as possible to avoid bankruptcy. Not only can this can save debtors from bankruptcy, but it work on their advantage during proceedings when bankruptcy is imminent.

Additional strategies to help avoid bankruptcy are described

below:

▪ Repayment of debts with creditors and executors

Often, simply approaching a creditor directly can help a person to avoid bankruptcy proceedings. Debtors who are not in able to meet their obligations, may see finding a type as an opportunity alternative repayment plan with their creditors. This may include for example rescheduling payments or reducing interest. Even if the proposal of a debtor is rejected, he can again show his good faith. When the amount of the debt is large or it involves a large number of creditors, the debtor's proposal for a meeting of creditors and an attempt to do so renegotiated loan agreements can work. Creditors can take into account the general situation and try to avoid formal procedures of bankruptcy, realizing that with a compromise they could avoid a situation of harmful to all of them. Therefore, they can agree on the reduction of outstanding liability with the objective of finally achieving a better result.

▪ Reducing expenses

The reduction of expenses differs between debtors, natural persons and legal persons. Individuals can stop using credit cards thus reducing the accumulation of debt. Further, they may decide to postpone some purchases, at least temporarily. Legal entities can choose to reduce expenses by downsizing the number of staff or their salaries or through the reduction of business expenses, by including stopping any activity that is not productive.

▪ Increase in income

Debtors who manage to raise incomes have a better chance to avoid bankruptcy. Lenders may see this as a major reason to support debtors' efforts. The income of a natural person can be increased by employment additional or from the sale of services. In some situations, debtors can generate investment income although the risk of failure must also be considered. Legal entities can be successful in increasing revenue by reallocating assets to more profitable activities or through increased sales.

▪ Don't walk the tightrope of debt

Debtors are often advised to exit bankruptcy (and if possible, from debts) and stay in that situation. Often people live with debt as something normal. Endemic risk for these situations it is not always apparent until the insolvencies, which are often unexpected. The convenience of living in debt can deteriorates under an unbearable weight. It can also affect his ability to borrow, further reducing this person's ability to have access to finance and gradually pushing the person to the point of no more turning back.

▪ Professional help

Debtors can seek professional help. When debtors are unable to find solutions on their own, some other ways may be warranted. Creditors sometimes lose confidence in their debtors' intentions or ability to perform obligations and refuse to communicate with them. At this point, it is necessary the involvement of a third party. In many countries, debt management programs or professional help are an invaluable aid in dealing with insolvency. In Albania, this industry is not fully developed, however some entities such as legal offices, accountants and bookkeeping offices have the ability to help in this context. This can help debtors discover new ways to organize their debts. It can also help debtors avoid direct

contact with money collection agencies and instead focus on learning how to deal with debt problems adopting new ways or practices.

3. Bankruptcy proceedings: an overview of brief how to proceed

The debtor must follow 6 main rules when considering official procedures bankruptcy:

▪ Cost of Bankruptcy Proceedings

Before choosing the option of submitting an official request, debtors must assess whether they can cover the cost of bankruptcy proceedings. The prior condition to the court's approval of the bankruptcy petition is to ensure that the cost of the proceedings is covered by the debtor. Otherwise, the court will block it and reject the request.

In practice, the bankruptcy court, directly or through an expert or a temporary administrator assesses whether the debtor's assets cover the cost of bankruptcy proceedings. This is essential proof of how assets to the extent of bankruptcy must at least cover the costs of the proceedings of bankruptcy. However, before making such a potentially important decision, the court must inform the creditors and make a public announcement to the NBC and other public authorities. Within 60 days of this notification, a creditor, or an interested party, has the opportunity to object to such termination^[3]. Such objection may be based on grounds the following:

1. The debtor has assets;
2. Further investigation is required into the debtor's transactions which may lead to their avoidance.

However, according to Article 20.2 of the LB, the bankruptcy court cannot suspend procedure if creditors or other interested parties are not informed and a public notice is sent to the National Business Center and other public authorities. This public notice regarding the debtor's situation is intended to allow any interested party to object the termination if he is aware of the existence of assets [of undisclosed] belonging to the debtor or in case further investigation is necessary for certain actions undertaken by the debtor in relation to its assets when actions such were detrimental to the bankruptcy estate.

▪ Consider the Reorder Option first

The LB provides in a single way to initiate bankruptcy procedures which can be divided into liquidation or reorganization. At any time during the proceedings, a debtor may request immediate liquidation. However, natural persons and lawyers who initiate bankruptcy proceedings should always take into account the possibility of debt reorganization with the approval of their creditors. This can include extended repayment periods, discounts, lower interest rates, etc. From the debtor's point of view, this solution is usually preferred to liquidation as the debtor can continue to manage^[4] his business.

▪ Prepare the request and Deposit it

Submit a complete application along with relevant documents. Debtors who decide to be involved in bankruptcy proceedings must follow the instructions of LB and include

all the necessary information and documents. At their request, debtors or creditors must be clear and transparent about the reasons for the request and include in it, all the official information about their activity. The request must also include detailed financial information on the past three years, such as and all information about the debtor's assets. Finally, the debtor who presents the request must include information on all his known creditors.

▪ Don't forget debt relief

Often, one of the most important things debtors need to keep in mind is dismissal from debts of the multiplication of execution procedures. Debtors can present at any time during the bankruptcy proceedings a request for discharge from unpaid debts. However, such a request includes in it at the same time a request for liquidation.

▪ Filing request for publication of bankruptcy

The debtor or his creditors may file a request to initiate proceedings for bankruptcy following the requirements defined in the law^[5]. When a debtor files petition for bankruptcy, his petition may be based on actual insolvency or the expectation that insolvency will arise in the near future which is something that the LB not only allows it, but also encourages it. When filing in cases of insolvency "predictable", likelihood of saving society and ensuring the highest level of return to creditors are often much higher. The LB is more restrictive in case of procedures bankruptcy requested by the creditor. The following subsections describe the mechanisms for the initiation of bankruptcy, both by creditors and debtors.

▪ Request for initiation of bankruptcy proceedings by creditors

Insolvency is a common occurrence. As such, the contracting parties are aware that there is a possibility that any debtor will become unable to pay. Once a debtor becomes insolvent, he must address the issue at a reasonable and efficient way. As such, effective bankruptcy systems introduce benefits to creditors in several ways, including:

- Increase of the possibility of recovery for the creditor. There are several ways this can happen, including the early initiation of bankruptcy proceedings, the avoidance of duplication of costs and improved coordination between creditors.
- Increase of trust between the parties, thus increasing the possibility of successful reorganizations. When a debtor becomes insolvent, creditors worry for the management of the situation, thus creating an unfavourable environment for agreement. Effective bankruptcy procedures introduce impartial actors in the multi-party relationship and provide the creditors with the information necessary to make informed decisions about the case.
- Because an effective bankruptcy law aims to increase the recovery of creditors after bankruptcy, the set of available assets that creditors owe to lend has expanded. Thus, creditors can benefit from more possibility^[6].
- Provides favourable conditions for financing after the initiation of the procedures bankruptcy, offering

³ See Article 20 of the LB

⁴ *New Bankruptcy, The: Will It Work for You*, Cara O'Neill, NOLO, December 26, 2023

⁵ See Article 11 of the LB

⁶ *Bankruptcy Investing - How to Profit from Distressed Companies*, Ben Branch, Hugh Ray Esq, Beard Books, February 1, 2007

creditors additional business opportunities in the loan market with financial difficulties merchants. These creditors tend to be smaller in size, ie include fewer contractual safeguards when dealing with the debtor and be more likely to suffer negative consequences from the other party's non-compliance. Effective bankruptcy laws allow for quick resolution of cases and recovery quick for all creditors involved, reducing the negative effect of one the debtor who does not fulfil his obligations.

Creditors' bankruptcy filings are more restrictive than those filed by the debtor. Proceedings will be open by the request of a creditor only if the creditor proves the situation of the debtor's insolvency^[7]. The LB defines "insolvency" as "the situation when a debtor, whether natural or legal person, is unable to pay debts at him within the deadline. For legal entities, insolvency also refers to the financial situation, where the amount of the debtor's obligations exceeds the total value of his assets".

The court will review the creditor's request and whether it is in accordance with the legal requirements, will notify the debtor of the request within 5 days by the relevant court, the state of insolvency of the debtor will be presumed, after passing deadlines, i.e. of five days when the scope of the court's decision includes a salary or alimony order and a time limit of 10 days for all other cases^[8].

The debtor can contest the creditor's claim by filing an objection within 10 days of receiving the notification. This prolongs the decision to start the procedure bankruptcy, as the bankruptcy court must evaluate both positions. If no objections are submitted within the deadline and the official requirements of the request are met, the bankruptcy court decides on the initiation of bankruptcy proceedings.

If the creditor's claim is opposed by the debtor, the bankruptcy court must undertake the following actions^[9]:

1. Set the date of the court session;
2. Summon the debtor and the creditor to participate in the court session;
3. May appoint an expert or a temporary administrator for him given an opinion on the initiation of bankruptcy proceedings if any of the parties require it or the bankruptcy court considers it necessary.

The required opinion can serve to

- Verify if there are reasons that justify the initiation of bankruptcy procedures;
- Verify if the debtor's properties cover the costs of the procedures bankruptcy;
- Give an opinion if it is necessary to establish temporary measures [26] for the protection of assets.

The appointment of a temporary administrator is among the temporary measures. The bankruptcy court can appoint this administrator to supervise the debtor. The latter refers to as a temporary bankruptcy administrator, while the other is an administrator of temporary supervision. After the appointment, the temporary bankruptcy administrator will be charged for securing and preserving the debtor's assets with the administration of daily affairs of the debtor.

Because his appointment comes before the opening of the bankruptcy case, the administrator of the temporary bankruptcy must try to maintain a normal continuation of the activity trade of a debtor, as this can prevent unnecessary losses and facilitate going concern results if bankruptcy proceedings are opened. In this aspect, a temporary bankruptcy administrator who identifies the granting of some aid, services or credit as necessary for the continuation of the activity may determine payments with specific priorities for the providers of these aids. Acting thus, the temporary bankruptcy administrator can consider them as his creditors bankruptcy procedure^[10].

4. Effects of the opening of the procedure of bankruptcy

Whenever the court decides to open a bankruptcy procedure, its opening decision must contain the following information:

- Identification information for the debtor, such as first name, last name, date of birth, personal identification number or taxable person number;
- Identification information for the administrator - either bankruptcy or supervisor -, including first name, last name, personal identification number, e license and an indication of whether it is a bankruptcy administrator or an administrator supervision;
- An order providing for the publication of a copy of the short form decision on the official website of the court, in the CKB and in the Official Journal;
- An invitation to each creditor of the debtor to verify his claims with bankruptcy or supervisory administrator within 45 days from the publication of the decision at the NBC;
- with the bankruptcy or supervisory administrator within 45 days from the publication of the decision at the National Business Centre; which must be within 120 days of the date of the decision;
- List of creditors, if available. Based on this list, the court of bankruptcy may appoint a temporary committee of creditors for him supervised procedures (see below), unless deemed inappropriate due to the small nature of the business or other factors.

When bankruptcy proceedings begin, all assets are subject to the proceedings and are known as bankruptcy measures. The bankruptcy measure includes the totality of the assets and rights of the debtor on the date of initiation of the procedure, bankruptcy, as well as assets and rights acquired during this procedure, within the territory of the Republic of Albania or outside it, except for assets that are excluded from compulsory execution, as provided for in the Code of Civil Procedure.

Once bankruptcy proceedings are opened, creditors are expected to be proactive in their manner to participate in the bankruptcy procedure. Indeed, creditors whose claim was raised before the initiation of the procedure of bankruptcy, i.e. bankruptcy creditors, must present their claims with writing to the bankruptcy or supervisory administrator. Debtors who are natural persons are protected by Albanian law against the circumstances that would make their lives very difficult in case of bankruptcy. Albanian law protects

⁷ See article 16 of the LB and article 517 of the Code of Civil Procedure

⁸ *Manuali mbi ligjin Shqiptar për falimentin*, Ronald C.C. Cuming, USSAID

⁹ <https://qbz.gov.al/eli/ligj/2016/10/27/110-2016/b3d1032a-0e86-4df2-842d-d44d406d52ff>

¹⁰ *Creating Value Through Corporate Restructuring: Case Studies in Bankruptcies, Buyouts, and Breakups*, Stuart C. Gilson, Edward I. Altman, Wiley; 2nd edition, April 5, 2010

such debtors excluding certain assets from and liquidation. This exception applies before and during bankruptcy proceedings. Creditors are expected to be proactive in their manner to participate in the bankruptcy procedure. Indeed, to be recognized within one bankruptcy procedure^[11], creditors whose claim was raised before the initiation of the procedure of bankruptcy, i.e. bankruptcy creditors, must present their claims with writing to the bankruptcy or supervisory administrator.

The bankruptcy administrator drafts the liquidation plan and files it with the court within 20 days from the date of the liquidation decision. The liquidation plan, which provides the method of liquidation of the assets included in the bankruptcy measure, must be presented to court for review. The debtor, as well as his creditors and employees, may submit comments or objections within 15 days from the date of filing the plan in court. Taking into account their comments, the bankruptcy administrator can reformulate the plan in whole or in part within 5 days. The court decides on the final content of the liquidation plan internally 5 days after submitting the plan. After approval, the bankruptcy administrator implements the liquidation plan in accordance with the provisions of the LB, within three months from the date of initiation of liquidation procedures. The deadline can be extended by another three months' administrator request. During the implementation of the liquidation plan, the bankruptcy administrator should prepare a detailed progress report every two months. Creditors are the right have access to any progress reports. Liquidation of the debtor's assets is the main method of repayment by the debtor. Debtor (natural person) can be discharged from the remaining obligations that have not been settled for a long time procedure. After the final distribution is complete, the bankruptcy court decides on completion of the bankruptcy procedure. Full payment of all creditors of bankruptcy, regardless the stage of the proceedings, is also a cause for termination of the procedure. The decision of the court and the reasons for the termination can be published.

Conclusions

Economies should strive to keep their bankruptcy legal frameworks up to date in order to better address current challenges. The LB aimed to modernize the system of bankruptcy in Albania, providing further protection for the rights of creditors, as well as temporary relief and useful restructuring tools for debtors. It also aimed to reduce the time limits for the bankruptcy proceedings reviewed from the courts, thus increasing efficiency and reducing costs.

Further steps can be taken in the future to improve the legal framework. The well-functioning of the National Bankrupt Agency is necessary for the liquidation of creditor in the bankrupt cases in Albania.

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