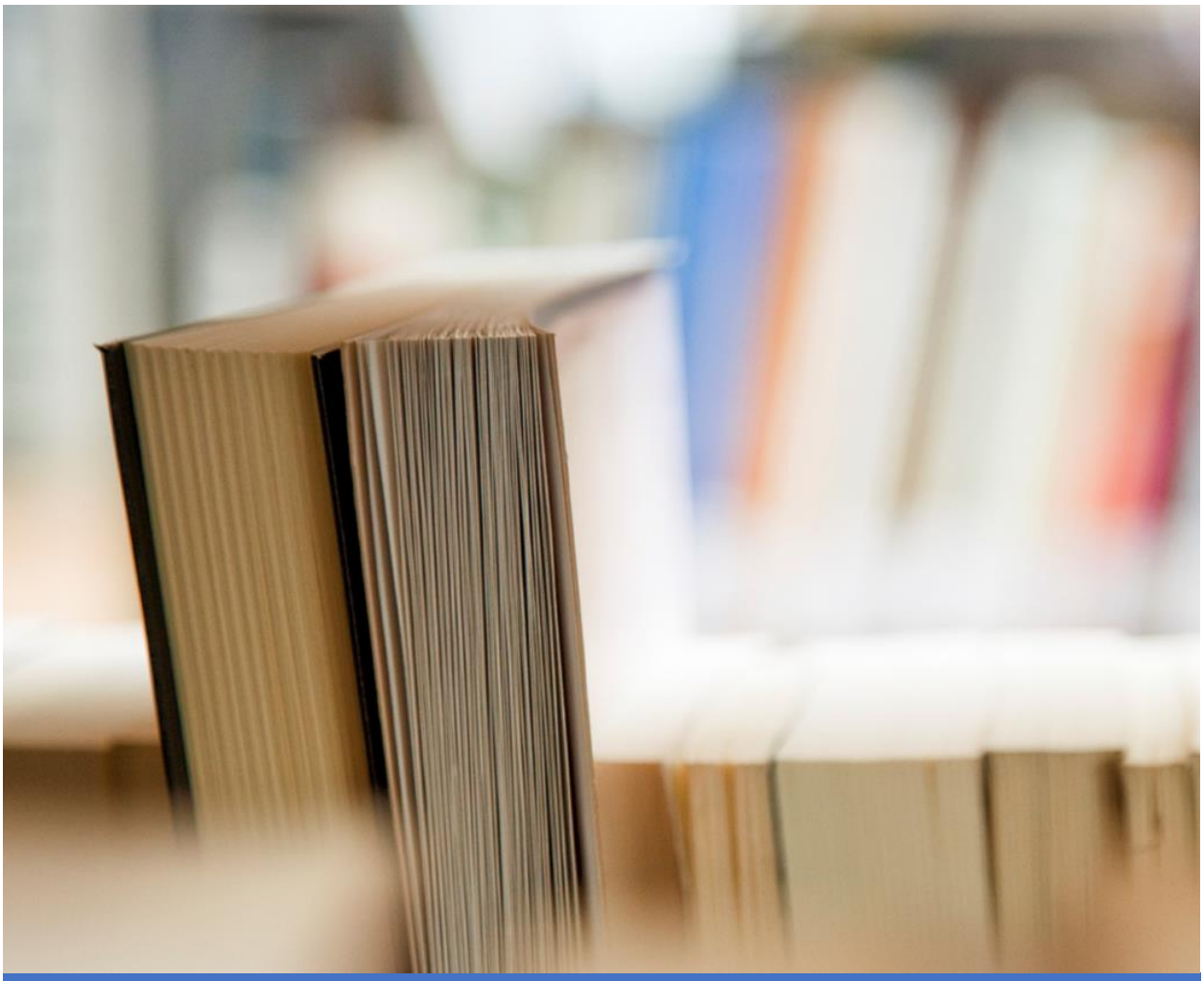

GUIDE ON EXPEDITED RESTRUCTURING AND PROCEDURES FOR BUSINESSES/MEDIATORS

IFC International Finance Corporation
WORLD BANK GROUP
Creating Markets, Creating Opportunities

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IFC International Finance Corporation WORLD BANK GROUP

Creating Markets, Creating Opportunities

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KALO & ASSOCIATES (EST. 1994) is a full-service commercial law firm operating in Albania and Kosovo, representing prominent foreign and multinational companies and agencies, including several Fortune 500, that do business in a wide spectrum of industries across the globe, including Balkan region. The firm employs qualified and dedicated lawyers with significant experience in handling sophisticated and complex legal matters and transactions at international standards, in the local environment. The Firm manages successfully and in a timely manner the business cases due to the structured departments: 1) Corporate (M&A and JV), 2) Banking and financial services, 3) Projects (concessions and PPPs) in the areas of energy & natural resources, 4) Intellectual property (including data protection, labelling, IP rights infringement), 5) Employment & migration, and 6) Litigation, mediation and arbitration. KALO & ASSOCIATES enjoys regional recognition being a founding member of SEE LEGAL (South East European Legal Group), the regional leading group of 10 law firms, providing seamless legal services, including cross-border commercial transactions in 12 jurisdictions of SEE LEGAL from 2003.

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1. Introduction and goal of the Guide

In the ambit of the Debt Resolution Phase II Project, the International Finance Corporation (IFC), member of the World Bank Group (WBG), with the support of the Swiss State Secretariat for Economic Affairs (SECO), commissioned the preparation of a Guide on expedited restructuring, hereinafter simply referred to as the "**Guide**", which shall explain the rules and procedures laid out by the law no. 110/2016 "On bankruptcy" ("the **LoB**") and the relevant bylaws[1] on such type of restructuring of insolvent debtors.

The Guide shall offer a possibility to get to know the procedures from their commencement up to the finalization of the expedited restructuring between the debtor and its creditor/s. In line with other similar documents produced for this Project, this Guide provides the reader with detailed information on the novelty of the Albanian bankruptcy system.

As a preliminary note, it can be stated that expedited restructuring is an attractive option for debtors who are in a situation of imminent insolvency which might hit them within the upcoming six months. The objective of this procedure is essentially to tackle distress early by reaching a consensus on a reorganization plan largely out of court, and to validate such agreement through an expedited procedure contemplated in the LoB. This option is provided while the debtor is still able to meet his obligations. The LoB, following most of the legislation available in comparative countries, has not provided for a pure out of court restructuring, but instead has introduced a hybrid procedure (i.e. expedited restructuring or reorganization), based on which the debtor and a certain majority of creditors may enter into a reorganization agreement ("the **Agreement**"), drafted out of court, which must be approved by the Bankruptcy Court through an expedited procedure.

Distressed debtors may benefit from the new procedure introduced by the LoB in a number of ways which shall be described by this Guide in the following sections. An effective expedited restructuring process would allow debtors to soon find some breathing space whilst their creditor/s shall also have at their disposal an expedited means to meet their financial rights. This procedure increasingly builds trust among parties, while also limiting in court activity which often prevent restructurings deals from being reached or implemented.

In international practice there are four main ways of conducting the bankruptcy procedures:

i. out-of-court restructuring workout which is a pure contractual relationship of the debtor with his creditors;
ii. hybrid procedure which mixes out-of-court restructuring with elements of formal reorganization;
iii. in court formal reorganization through financial rehabilitation;
iv. in court formal bankruptcy through liquidation of the debtor.

In court bankruptcy proceedings can hence act as an alternative, as a complement or as part of a sequence to out-of-court workouts and hybrid proceedings.

[1] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. Available at: https://qbz.gov.al/share/kPvlLNFsQXKNkgP8JLVSrA.

In Albania, the LoB defines the expedited restructuring as the reorganization of a debtor in operational difficulties through restructuring of debt, based on an agreement between the creditors and the debtor drafted outside the bankruptcy court and approved by the court with expedited procedure[2].

As it may be noticed, the LoB envisages a hybrid procedure in the expedited reorganization, with elements of both out-of-court workouts and procedures involving and requiring interaction with the court. Such hybrid procedures require the involvement of the courts as an integral part therein, but their participation is less intensive than in formal reorganization proceedings. As a result, the expedited restructuring procedures involve much shorter procedural timelines. The Albanian type of hybrid procedures, as will be noticed later in the Guide, are procedures that allow the debtor to negotiate in good faith and in confidential manner with its creditors while the court enforces a stay on creditors' actions.

The goal of this document is to provide debtors, creditors, administrators, mediators, lawyers and the appropriate state institutions with information regarding the principles and guidelines on expedited restructuring. The Guide is structured in 6 parts: (i) introduction; (ii) what is an expedited restructuring in Albania; (iii) difference between out-of-court vs in-court Restructuring; (iv) negotiation of the parties and role of the mediator; (v) the out-of-court reorganization agreement and its effects; (vi) finalization of the expedited reorganization procedure.

2. What is an expedited restructuring in Albania?

In the introduction we stated that the Albanian bankruptcy system recognizes a hybrid process giving the opportunity to the creditors and debtor to fast-track an agreement on the debtor's restructuring. What the LoB seems to be aiming at is a contractual workout of the parties associated with eased formality of in-court proceedings. As much as the legal provisions seem to be oriented towards a pure out-of-court workout in the preliminary phase, the procedure falls into a hybrid pattern where it incorporates formal court components. The latter phase provides several benefits, including a reduction in disputes stemming from a purely contractual workout.[3]

To recap: The main negotiation is conducted out-of-court, between the debtor and a certain number of creditors, who represent the legally established majorities in the law (at least 50 to 65 of the value of the claims -depending on the content of the plan- in each class). Once the parties reach a reorganization plan, which may be purely financial (i.e. debt rescheduling) or also operational (i.e. related to the business operations), this plan is submitted to the court for verification of the legal requirements and its approval has similar effects than the approval of a reorganization plan. This is particularly important: The biggest drawback of a pure "out of court" mechanism ("pure" meaning that it lacks court involvement) is that its effects are only extensive to the parties signing that agreement. Therefore, if there are holdouts, they are outside of the plan and can, potentially, continue their legal actions against the debtor. This changes for hybrid proceedings, such as the one contemplated in the LoB. If certain majorities of creditors are reached[4], the court validation of the restructuring plan turns it binding and mandatory to dissenting and

[2] Law on Bankruptcy (r.d. 27-10-2016, n. 110/2016), Albania. art. 122 and following. Available at: https://qbz.gov.al/share/9huTDgHRSlGC31VDM2KSSQ.
[3] The in-court phase does so by certifying and validating the restructuring contract.
[4] The majorities need to be the same as the ones for the reorganization plan, as per Art. 132LoB.

non-participating creditors, that are within the plans' scope. Therefore, hybrid workouts (unlike pure "out of court" workouts) solve the issue of holdouts. These hybrid restructurings are also called "pre-packs" or "pre-arranged" reorganizations in some jurisdictions and they are very much in line with WB ICR Principle B.4.2 which states that "B4.2 Where the informal procedure relies on a formal reorganization, the formal proceeding should be able to quickly process the informal, pre-negotiated agreement."[5]

Even though court involvement entails additional costs, if successful, such collaborative restructuring is far less expensive than a full in-court bankruptcy proceeding. Before insolvency proceedings are initiated in court, the debtor and the creditor have an option to mutually agree upon debt restructuring, as a result of which both parties attempt to come to an agreement to structure the terms of the debt repayment in a way that allows the debtor to continue doing business. Indeed, it is often the case even in practice, that parties to insolvency cases attempt at first to negotiate a consensual out-of-court restructuring. The out-of-court negotiations allow the parties to discuss without disclosing the financial difficulties of the debtor to third parties (public, debtor's contractors, etc.) and without applying any rules set out by the formal in-court proceedings. Once they move to the in-court phase, the court's approval "shelters" and protects the agreement against potential future voidance action challenges.[6]

3. Difference between out-of-court vs in-court restructuring

Regardless of the form of procedure, being it an out-of-court or in-court restructuring, a turnaround can be achieved, as long as it is mutually beneficial, and the right strategic decisions are made. Considering the company is either in a state of financial distress or on the verge of defaulting on its debt obligations (and at risk of foreclosure due to a breached covenant, missed interest or principal repayment), reorganization becomes paramount to restore the financial health of the troubled company to a normalized state. In both in-court or out-of-court restructuring, the shared objective is for the debtor to return to operating on an economically sustainable manner. But for an out-of-court restructuring, the process can be a simpler, more cost-effective, and more efficient mechanism to modify a company's capital structure[7]. The different types of workout and reorganization procedures are located on a

[5] The World Bank "Principles for effective insolvency and creditor/debtor regimes", 2016. Available at" https://www.worldbank.org/en/topic/financialsector/brief/the-world-bank-principles-for-effective-insolvency-and-creditor-rights.

[6] In pure out of court mechanisms, this tend to be a problem in comparative legislations. In Albania in particular, out-of-court restructurings enjoy certain protections given by Art. 79 in fine of the LoB and its regulation given by the Decisions of the Council of Ministers (DCM) no. 65 dated 03.02. 2021 "On the approval of the Regulation on expedited reorganization's out of court agreements" adopted to meet the requirements of article 79 of the LoB. This regulation has been drafted to set out the rules for an implementation of out-of-court workout in a fair and accelerated manner that, in turn, protects these agreements in a way that in a scenario of liquidation, they cannot be undone by the court, given certain requirements stipulated therein and in Art. 79 of the LoB. Although the regulation appears not to have been used in practice yet, it is expected that creditors, debtors, and other interested parties such as intermediaries will benefit from it. Specifically, mediators have shown a very keen interest to this Regulation as they may use it as a new stream of business, in the sense that mediators will aim to mediate the resolution of disputes between the creditors and the debtor up until the finalization of the reorganization agreement. It is worth mentioning however that the regulation does not impose the use of mediation or mediators to reach an agreement. It is up to the discretion of the parties whether or to use an intermediator in the out of court restructuring process.

[7] Wall Street Prep, 2022, "Out-of-Court vs In-Court Restructuring", Accessed in January 2022. https://www.wallstreetprep.com/knowledge/out-of-court-vs-in-court-chapter-11-restructuring/

spectrum ranging from informal to formal procedures, reflecting -in essence- the extent to which they entail institutional involvement (Figure 1).

Figure 1. The Formal-to-Informal Continuum of Restructuring Procedures

Source: A Toolkit for Corporate Workouts, World Bank, 2022.

Debtors are advised to make their best efforts to reorganize in out-of-court proceedings considering that in general, this scenario is faster and less costly than standard court bankruptcy proceedings.

However, while pure out of court proceedings are generally available for a debtor and its creditors to negotiate on a contractual basis, the LoB, as previously explained, provides for a hybrid alternative. To further understand the characteristics of the different procedures available, his section distinguishes between the pre – packaged restructuring and pure in court proceedings (i.e. standard procedure under the LoB).

It should be highlighted that a hybrid restructuring may not always be possible as several factors need to be considered:

- the debtor must have sufficient liquidity to operate while negotiating with its creditors. Taking into account the situation of the debtor (i.e. that insolvency is expected within the next six months), the latter, before sitting down in negotiations with the creditors, must ensure that there is sufficient liquidity to consider real measures which will set out the basis of the out-of-court reorganization agreement. If there is no minimum liquidity to carry out the expedited reorganization procedure, and securing additional working capital for the negotiation period is not possible, then the standard court procedure is typically a better alternative;
- the main stakeholders in this procedure, which are the creditors, must be willing to negotiate with the debtor;
- discussions should have a constructive approach and generally require creditors to have confidence in the business plan presented by the debtor and the management's ability to implement it;
- the debtor must be able to overcome his financial problems without going through bankruptcy proceedings.

The parties should cooperate in good faith, and as laid down in the regulation "On the approval of the Regulation on expedited reorganization's out of court agreements" (the Regulation) should be mutually

obligated to keep confidentiality of the information obtained in the process of the negotiations[8]. Fairness and equity should be observed, and transparency should be upheld.

The main characteristics of both in and out of court procedural steps can be seen as portrayed in the following table:

Main aspects of In-Court Reorganization and Expedited Reorganization
In-Court reorganization procedure:
The bankruptcy court takes its final ruling based on acts.
The bankruptcy court deliberates on decisions & orders.
Court decisions and orders are immediately enforceable.
Appeals against the bankruptcy court decisions do not suspend the execution of the latter, unless otherwise provided by law.
The bankruptcy court examines and decides on the request for filing of the bankruptcy procedure no later than 60 days from the submission of the request to the court secretariat.
The bankruptcy court, depending on the nature of the case, examines the case either verbally at a hearing or in the deliberation room on the basis of written acts.
Failure of the parties to appear before the court does not hinder the proceeding of the case.
During the judicial investigation, the bankruptcy court may take as evidence the opinion of the party's expert and/or the expert appointed by the bankruptcy court itself.
Expedited Reorganization (Hybrid) procedure:
The Debtor or Creditors establish formal correspondence to initiate the restructuring procedure between them.[9]
The commencement of the expedited reorganization procedure suspends all executions on the debtor's assets that are necessary for the continuation of its commercial activity.[10]
The initiation of the expedited reorganization procedure does not suspend the accumulation of interests.[11]
The Debtor provides the Creditors participating in the negotiations with complete information on the financial activity, financial forecast, data on assets and any other information deemed on the company as deemed necessary by the creditors.[12]
Organizing the Creditors' Committee (only if 10 or more Creditors participate)[13].

[8] Articles 3 and 4 of the Regulation
[9] Article 5 of the Regulation
[10] Article 126 of the LoB and 6 of the Regulation
[11] Article 126 of the LoB
[12] Article 3 of the Regulation
[13] Article 7 of the Regulation

Signing the "Out-of-Court Reorganization Agreement", in front of the notary.[14]
The parties file in court only the signed Agreement.[15]

Taking into consideration the positive aspects of an out-of-court process (regardless of the fact that in Albania this process is of a hybrid nature as discussed throughout this Guide) there are different considerations that can be made:

1. Debt composition and relations with the debtor.
2. Time restraints.
3. Privacy of procedure.

3.1. Debt composition and relations with the debtor

Where the number of creditors is large and the debtor has an intricate company structure, it may be harder to make a hybrid procedure successful. In cases where the number of creditors is large, the chances to encounter resistance towards a reorganization agreement can be higher. This is mitigated by the fact that the majorities that the debtor needs to obtain to achieve a successful approval of the reorganization plan are the exact same in the expedited (or hybrid) reorganization as in the full in-court reorganization process (Art. 132 LoB).

When the number of creditors is smaller, it becomes easier for the debtor to sit and negotiate on an expedited reorganization plan with them. On a negotiation process perspective, to bring the parties closer to an agreement, elements such as:

a. cause of the financial decline of the company and whether it is simply a temporary state;
b. explanations on the reasons of inefficiency of key staff members leading to financial problems; and
c. showing will and engagement by the administration to overcome the current state of financial distress of the company,

can be used to open up collaboration scenarios with the creditors.

3.2. Time restraints

As the term implies, one of the reasons to pursue as an option the expedited reorganization is the avoidance of long court procedures which also include the respective expenses. Furthermore, given the freedom that such hybrid procedure provides, setting negotiations and organizing between the parties at more opportune timings can save a lot of trouble and reduce costs for a company which is in dire need to focus all its attention in regaining its financial stability.

[14] Article 8 of the Regulation
[15] Article 123 of the LoB

In-court bankruptcy procedures, in turn, are formalistic and demand strict adherence to all the steps set out by the LoB. As such, formal procedures don't offer the same level of flexibility allowing it to be adapted to the parties' needs.

As far as the court involvement goes in the expedited restructuring, it is mainly required for the authorization of the finalized expedited reorganization agreement[16], which does not hinder the process of negotiations between the parties.

3.3. Privacy of procedure

Being that the negotiation procedure is completely in the hands of the involved parties, it allows for private closed-doors negotiations, making it easier to set up meetings in a way that avoids disrupting the day-to-day activity of the debtor. This principle is explicitly envisaged even in the Regulation[17]. Moreover, it allows for debtors to delve into the negotiations without negatively affecting the public image of the business.

On the other hand, in-court reorganization procedures involve a level of publicity that may trigger indirect costs to the debtor even before negotiations with creditors gain any traction. For instance, potential clients may shy away after the filing of formal reorganization procedures just concerned at the signal given by the opening of bankruptcy proceedings.

4. Beginning of the out-of-court negotiation and role of the mediator

The out-of-court negotiation is an informal process of negotiation between the debtor and the creditors that can take multiple forms. Any of those out of court negotiations can be turned into a reorganization plan if the majorities are reunited and the process stipulated in Art. 121 onwards of the LoB is followed. However, to be granted the protection contemplated in Art. 79.4 against possible voidance actions, the Regulation prescribe a standardized procedure that begins with the submission of a request for negotiations by the debtor or by more than one creditor. There is no formal requirement on the form or content of the request as it can be submitted in any form that proves its submission to the other party[18].

The creditors (which the Regulation defines as requested parties) may express their consent to the initiation of standard negotiation proceedings in any form proving the delivery of such consent to discuss and negotiate to the debtor.

It is up to the parties to determine the date and place for the commencement of out-of-court expedited bankruptcy proceedings. Other creditors may join this procedure up until the Agreement has been signed between the parties[19].

As a general rule, all executions on the debtor's assets that are necessary for the continuation of the commercial activity are suspended only upon the initiation of the expedited reorganization procedure. However, such a suspension may also be agreed by a debtor and its creditors through a "Standstill

[16] Law on Bankruptcy (r.d. 27-10-2016, n. 110/2016), Albania. art. 79.
[17] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art. 4.
[18] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art. 5.1.
[19] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art. 5.2.

Agreement" that imposes a moratorium on exercising a creditor`s claims and may impose several obligations on the debtor, including one or more of the following:

- prohibition to undertake actions of extraordinary administration, except for the cases when the actions are deemed necessary for the progress of the activity of the company;
- prohibition to transfer the quotas or shares of the company;
- obligation to inform the creditors regarding the progress of the company's activity[20].

Failure of the debtor to comply with these obligations gives the creditor the right to terminate the negotiation procedure.[21]

4.1. The negotiation

During the negotiation phase, the debtor in particular, has the obligation to provide accurate and complete information for the purposes of reaching an Agreement. The debtor must provide all creditors participating in the negotiations with complete information regarding:

- the debtor's financial activity and the circumstances that caused the insolvency;
- a list of creditors and the respective obligations of each of them;
- financial forecasts, including the forecast of projected losses and gains, as well as the report of financial statements during the period of implementation of the Agreement;
- data on the amounts, assets, as well as the debtor's assets that can be used for the continuation of the commercial activity, as well as the fulfillment of the creditors' obligations, according to the reorganization agreement;
- any other information that the creditors deem necessary for the assessment of the debtor's financial condition and solvency to implement the proposed Agreement[22].

The parties are obliged to maintain the confidentiality of any data or information provided by the debtor or the creditors during or after the negotiations for the drafting of the Agreement, regardless of whether the Agreement is finalized or not, as well as not to use or disseminate the information obtained during these talks after their conclusion. Notwithstanding these confidentiality restrictions, the parties are not obliged to maintain the confidentiality of the data or information obtained during the negotiations in the following cases:

- the provider of information expressly gives his consent;
- the information is requested by Authorities that are vested by Law with the right to have such information;
- the party participating in the negotiations uses this information to seek the fulfillment of a right or its legitimate interest against the other party[23].

The party that violates the obligation to maintain the confidentiality of data is liable for the damage caused to the other party.

[20] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art. 6.1.
[21] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art. 6.2.
[22] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art. 3.
[23] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art. 4.

4.2. Coordination of the creditors[24]

The creditors to an out-of-court negotiation procedure have the right to establish a creditor`s committee only if at least 10 (ten) creditors participate in the negotiation. The established committee will allow the creditor`s to be represented in the discussions with the debtor.

The creditors' committee is composed by at least 3 (three) creditors. The meeting for the election of the creditors' committee takes place with the participation of at least 75 (seventy-five) % of the creditors participating in the negotiations. The members of the creditors' committee are appointed by simple majority of votes of the creditors participating in the meeting.

The Agreement is voted and signed by each of the creditors regardless of the decision of the creditors' committee during the negotiation procedures.

4.3. Role of the mediator

Mediation is an extrajudicial independent activity regulated by the Law 10385/2011 "On Mediation", in which the parties seek the settlement of a dispute or the conduct of negotiations between them through a neutral third person (mediator), in order to reach an acceptable solution. It can be commonly understood that a mediation process and a mediator can easily fit in an out-of-court reorganization of a debtor, in particular prior and during the negotiation process up until the finalization of the Agreement. As a rule, mediation procedures are under the constant monitoring and supervision of the Ministry of Justice. It is to be emphasized however that mediators have no right to order or compel the parties to accept a settlement of the dispute, or in this case the Agreement.

Debtors and/or creditors may request for mediators to be present during the negotiation procedures and through the mediator draft, negotiate and finalize the Agreement.

The above being said, it is very important to mention that **the parties have the right but not the obligation to use a mediator in the process.**

Neither the LoB nor the Regulation explicitly foresee the use of a mediator in the process. Nevertheless, considering the nature of an out-of-court negotiation procedure, mediation may at times be a useful tool to facilitate a successful outcome of the negotiation process.

5. The out-of-court reorganization agreement and its effects

The Agreement must be made through a notarial deed, otherwise it is binding only for those creditors that have voted for its approval and are parties to the Agreement.

In cases when the standard negotiation procedure has not been observed, the debtor can guarantee the execution of obligations, through any means provided by the legislation in force, until the moment of the completion of negotiations[25]. Such guarantee means are typically constituted by mortgages on immovable properties and also by charges, pledges and financial collateral agreements on movable properties[26].

[24] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art. 7.
[25] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art. 11.
[26] We find this provision to be more relevant during the phase of execution the debtor`s obligations to his creditors.

5.1. Content of the Agreement[27]

The Agreement shall include and regulate the restructuring of the debtor's obligations in one of the following ways:

- postpone the debt maturity or the date of repayment of the obligation;
- reduce the amount of outstanding obligations;
- replace existing debt with a new debt that has a later maturity date or with a smaller outstanding amount;
- provide new sources of financing;
- a combination of the above methods.

The Agreement may include any other appropriate measure that the parties agree to, which is intended to restructure the debtor's obligations. The content of the Agreement must be such as to ensure, as far as possible, based on objective economic criteria, the possibility of the debtor to continue the activity for a medium-term period, not less than 6 (six) months.

5.2. Effects of the Agreement[28]

The terms and conditions of the Agreement, if signed in accordance with the Regulation, are applicable even if the debtor becomes insolvent and normal bankruptcy proceedings are initiated.

Any payment, warranty or legal action performed in the implementation of the provisions of the Agreement shall be considered valid within the bankruptcy procedure.

In case the parties have foreseen in the Agreement that the debtor will provide new sources of financing, such funds shall be used only for the execution of the agreement. In case of a subsequent state of insolvency of the debtor, the mentioned funds, will be considered part of the bankruptcy estate, against which all creditors can file claims, as provided for in the LoB[29].

6. Finalization of the out-of-court expedited reorganization procedure

It should be clarified that, even in the optimistic scenario when the debtor reaches an agreement with all its creditors, the execution of such agreement per se does not finalize the out-of-court expedited reorganization procedure. As mentioned before, such procedure is finalized in Court considering that it is precisely the bankruptcy court the authority approving and validating the content of the Agreement through an expedited procedure. In the scenario that the debtor has not reached an agreement with all its creditors, additional efforts will be required in order to find common ground during the proceedings.

Therefore, this Section, will lay down the rules and procedures observed by the bankruptcy court for the approval of the Agreement and finalization of the procedure by means of an expedited reorganization.

[27] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art. 9.
[28] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art.10.
[29] DCM On the approval of the Regulation for expedited out of court restructuring (r.d. 03-02-2021, n. 65), Albania. art. 11.

6.1. Filing of the Agreement with the bankruptcy court and expedited reorganization procedure

A signed Agreement is supposed to be filed with the bankruptcy court where the debtor is registered, within 6 months of the estimated initiation of bankruptcy, following the procedure of the regular bankruptcy petition but with slightly different components and subject to shorter deadline periods for its various steps. The rules and procedures for the expedited reorganization from the moment of filing the signed agreement by the debtor until the finalization of the process are set out in articles 123-134 of the LoB.

The debtor when filing the application must include:

a. all the documents listed in letters "a" to "e", clause 1, article 14 of the LoB, adapted to the imminent insolvency (a report of the debtor containing the causes of insolvency, financial statements for the last three years, a list of movable and immovable properties, cash flow and sources of income, a list of debtors and creditors, and a list of all legal proceedings in which the debtor is a party)[30];
b. a proposal for a reorganization plan, necessarily including the content described in article 98 of the LoB[31];

[30] The list of documents required by the Law on Bankruptcy in this case are as follows:
a) a report by the debtor stating the causes of the insolvency and the debtor's analysis of the future of the business;
b) the history extract on the debtor provided by the National Business Center;
c) the balance sheets and the financial statements of the debtor for the last three years of the debtor activity. If the debtor has exercised activity for a shorter period of time, as far as this period is;
d) a listing of immovable and movable properties, including:
i. the values of each asset at the moment of purchase;
ii. the current market value in case they have been subject to re-evaluation;
iii. location of the assets; and/or data registered in the public registries, whether any such assets are subject to any legal proceedings; and whether any such asset has been pledged as security, or is subject to any lien, and, if so, the value of the secured loan;
e) a listing of current cash balances and sources of revenue;

[31] In order for creditors to exercise their voting right duly informed, the reorganization plan should provide all necessary information to the extent possible and applicable, including:
- a general, concise report of the debtor's activity and the circumstances that led to the financial difficulties;
- a list and detailed explanation of the measures for the implementation of the plan;
- a detailed list of the creditors divided into classes of creditors;
- data on liquidity or assets to be used for the full or partial settlement of each class of creditors, the assets reserved for the creditors whose claims have been challenged, the procedures for resolving these claims, and duration of such procedures;
- description of the procedures of asset sale, if any, together with a list of assets to be sold with or without security interest and the use of the proceeds from those sales;
- commencement date and deadlines for the implementation of the reorganization plan;
- a clear statement that the approval of the reorganization plan will lead to a redefinition of the rights of all creditors, in accordance with the plan, including the scenario when the plan is not fulfilled or when its implementation is suspended, and the details on how these rights (creditors rights) will be redefined;
- a list of all members of the debtor's governing body and their remunerations;
- data on the manner and deadlines, according to which the debtor will fulfill the claims of creditors, arising from the sale of all assets or of all or part of the activity, or by obtaining loans or equity from third parties, or debt reduction, or debt relief or deferral of their term, from the conversion of debt to capital or from other strategies foreseen by law;
- the name of the proposed supervising administrator, if any, and the report that the supervising administrator shall present to the creditors;
- financial projections, including estimation of expected losses and profit, the report on economic and financial statements during the implementation period of the reorganization plan;

c. the Agreement signed by at least creditor/s representing 30 percent or more of the total value of claims recorded in the debtor's accounts[32].

The court will open an expedited reorganization procedure if it appears that the debtor will become insolvent, and the filed petition complies with the above-mentioned requirements. The decision of the court to initiate the expedited reorganization procedure includes:

a. identification of the debtor (in the case the debtor is an individual: the name, surname, paternity, date of birth, personal identification number and place of residence; or, if the debtor is a legal person/entity, the name, type of activity, identification number of the taxable person and residence);
b. the appointment of a supervising administrator (along with identification details of the administrator, including license number to practice the administration function) as well as an address for communication with creditors;
c. a request to any person claiming to be a creditor, to submit its claim within 30 days from the date of publication of the decision in the National Business Center and in the Official Gazette, as well as at the address provided by the supervising administrator;
d. notification to creditors that, all claims and objections regarding the list of creditors, must be submitted within 7 days from the moment of filing the list of creditors in the bankruptcy court;
e. information that an expedited reorganization plan has been proposed, and that is available to all creditors;
f. information that the creditors have right to express their support for the proposed plan;
g. appointment of a meeting of creditors in a date that cannot be later than 45 days from the moment of publication of the decision.

An appeal against the decision to open the expedited reorganization may be lodged within 10 days from the date of the announcement. The appeal does not suspend the applicability of the reorganization plan, unless the appellate court decides otherwise, based on causes that seriously affect the interests of creditors or the public interest[33].

During expedited reorganization proceedings, the debtor continues to manage his business though any transaction falling outside of the ordinary course will require administrator approval. Meanwhile, enforcement proceedings against the debtor will be suspended to facilitate negotiations.

The appointed administrator will draft and file an interim report on the causes of the debtor's financial difficulties, as well as an opinion of the viability of the business. A final report on the expedited reorganization plan must also be filed at least a week ahead of the vote.

All creditors should submit to the supervising administrator their claim(s), with as much detail and evidence as possible. It is the administrator's duty to review and verify the creditors' claims and compile a list of creditors to be deposited with the court within 20 days from the expiration of the claims' submission deadline. The list contains various information on the creditors and their claims, such as their identity, the claims' class, etc.

- estimate of income and expenses in case of liquidation, if the liquidation would have been carried out at the time the reorganization plan was submitted.

[32] Law on Bankruptcy (r.d. 27-10-2016, n. 110/2016), Albania. art.124.
[33] Law on Bankruptcy (r.d. 27-10-2016, n. 110/2016), Albania. art. 124.3.

After the creation of the creditors' list, creditors will vote on the expedited reorganization proposal. Quorum and approvals are governed by the rules applying to the general reorganization process. Objections, in turn, are only allowed based on failure to reach the required majorities[34].

6.1.1. Creditors meeting for voting the expedited reorganization[35]

The expedited reorganization plan voting meeting is chaired by the bankruptcy court and the supervisory administrator acts as secretary. In this case delegation is not allowed.

The list of creditors serves as the basis for the list of participants in the voting meeting of the expedited reorganization plan. For purposes of the plan's voting, the supervising administrator also reflects on the list those claims that have been challenged and have not been duly verified yet. However, this challenged claims are treated as conditional and are not counted for quorum formation nor for voting purposes.

For the calculation of the quorum, in addition to the creditors' which are present in the meeting, the supervising administrator includes the claims that have supported the expedited reorganization plan during the debtor's request and all other claims that have subsequently supported this plan. This means that such creditors (i.e. that have supported the expedited reorganization plan) do not need to physically be present in the meeting, as long as they have formally supported the plan.

The formation of the classes of creditors and the calculation of the majority for the approval of the expedited reorganization plan shall be the same as those foreseen for the normal reorganization plan.[36]

For the plan to be considered as approved, it is required, in each class, the simple majority of the value of the claims of the present creditors. However, a qualified majority (65%) of the affected class of creditors is required when the plan provides for a reduction by 50% or more of their claim or a rescheduling by more than 5 years[37]. The creditors are considered to have voted in favor of the plan, except when they participate in the voting meeting of the expedited reorganization plan and vote differently.

6.1.2. Effects of expedited reorganization plan approval

Upon adoption, the expedited reorganization plan is implemented, resulting in the debtor continuing to manage his business during the implementation. The provisions of the plan itself, in addition to the debtor, are also mandatory for the creditors. It should be clarified that the implementation of the plan is

[34] Extracted from the Commentary of procedures of the Law on Bankruptcy, prepared during the second stage of the Project which bundles articles 125 – 133 of the same.
[35] Law on Bankruptcy (r.d. 27-10-2016, n. 110/2016), Albania. art. 131.
[36] Under the LoB, the creditors are classified into five main groups:

- Secured Creditors, holding valid rights on a debtor's assets secured by pledge, mortgage or other security;
- Preferential Creditors, having a special category of claims, including employment termination claims, employee's personal injury claims or, life or health indemnity ones;
- Subordinated Creditors holding claims for late payment penalties accruing before the commencement of the bankruptcy case, fines, repayment of loans contracted with parties related to the debtor, or those that the parties have agreed to classify as subordinated;
- Unsecured Creditors, i.e. creditors who are not classified as secured, preferential or subordinated fall into this category.
- Creditors with an excluding right, i.e. "the owner of an asset which is in debtor's possession and which has a legal right to exclude such asset from the bankruptcy estate".
- Creditors of the bankruptcy proceedings whose claims arose after the initiation of the bankruptcy proceedings.

[37] See Article 108 of the LoB

continued to be supervised by the Supervising administrator, who should submit to the court a yearly report on this topic.

6.1.3. Effects of rejection of the expedited reorganization plan[38].

If the expedited reorganization plan is not approved, the bankruptcy court announces the beginning of the ordinary bankruptcy procedure, unless the debtor proves that he is not in a state of insolvency and the inevitable state of insolvency no longer exists.

The supervising administrator continues the task unless there are objective reasons to the contrary.

[38] Law on Bankruptcy (r.d. 27-10-2016, n. 110/2016), Albania. art. 134.

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