

# Albania

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## 1 Issues Arising When a Company is in Financial Difficulties

### 1.1 How does a creditor take security over assets in Albania?

Under Albanian Legislation security over assets can be created by way of securing charges on movable properties or mortgages over immovable properties.

The Albanian Law on Securing Charges allows the creation of securing charges on any type of movable property that has a commercial value, including tangible and intangible movable property, such as accounts, securities, and intellectual property. This law permits also the creation of a securing charge over future assets, such as inventory to be acquired, accounts to be created or crop to be grown. All future property acquired by the debtor, as specified in the securing agreement and during its validity, may be automatically charged. But, this is not applicable in the insolvency proceedings and the floating charge creditor will be treated as a secured creditor following the Raking of Claims as provided in the Albanian Civil Code.

The registration of the Mortgage with the Real Estate Registry Office is a requirement for the validity of the mortgage.

### 1.2 In what circumstances might transactions entered into whilst the company is in financial difficulties be vulnerable to attack?

According to Law no.8901, dated 23.05.2002, "On Bankruptcy" ('Bankruptcy Law'), transactions may be challenged (i) in the case that they are carried out 3 (three) months before the submission of the petition for the opening of the bankruptcy proceedings upon the condition that the debtor was insolvent, and/or (ii) in the cases that the transactions are carried out after the date of submission of the petition for the opening of the insolvency court procedure upon the condition that the other party was aware about the insolvency of the debtor or about the petition for the opening of the insolvency court proceedings.

Please also note that the Bankruptcy Law provides for hardening periods for some other types of transactions and some of these are 2 (two) and 4 (four) years prior to filing of the petition for the initiation of the bankruptcy proceeding.

### 1.3 What are the liabilities of directors (in particular civil, criminal or disqualification) for continuing to trade whilst a company is in financial difficulties in Albania?

If the company meets one of the conditions for insolvency, the

shareholder(s) of the company has the obligation to initiate the court bankruptcy proceedings within 3 (three) months starting from the date of awareness on insolvent standing. Otherwise they are personally liable and are punished with a fine.

Also the Administrator of the company is obliged to initiate the court bankruptcy proceedings. The administrator has the obligation to initiate court bankruptcy proceedings within 21 days from the date the company is overloaded with debts. In the case that the administrator does not act within the said deadline, the administrator will be personally responsible for the compensation of the creditors if these creditors suffer losses because of the non-filing of the request within 21 days.

In addition, according to the Criminal Code, entering into a commercial relationship with third parties, with the intent of hiding the bankruptcy status is punishable by a fine or up to five years of imprisonment.

## 2 Formal Procedures

### 2.1 What are the main types of formal procedures available for companies in financial difficulties in Albania?

Albanian Bankruptcy Law provides that companies in financial difficulties in Albania can initiate an insolvency procedure. This is the only available formal procedure under Albanian legislation, for a company in financial difficulties. Once the insolvency procedure has been initiated there is the option for either: (i) the adoption of a reorganisation plan aiming for the survival of the company; (ii) the sale of the debtor; or (iii) the liquidation of the company.

### 2.2 What are the tests for insolvency in Albania?

According to the Bankruptcy Law, a company qualifies as in insolvent standing when it is unable to pay its debts in due time or it is overloaded with debts. A company is considered as overloaded with debts in the case that the liabilities of the company toward third parties exceed its assets and it is not possible to continue the economic activity.

In addition, Article 104 of Law no.9920 dated 19.05.2008 "On Tax Procedures", as amended ("Tax Procedure Law") relates to the right of the tax office to initiate the insolvency proceedings for taxpayers registered in the form of commercial companies. Tax administration shall request the start of insolvency proceedings for taxpayers (registered in the form of commercial companies) in the following cases: (i) where for 2 (two) years the company has been registered by the National Registration Center ('NRC') as under a

passive status; (ii) when the tax liabilities of this taxpayer are declared as uncollectible; (iii) where a company declares losses of its own capital for at least 3 (three) consecutive years; (iv) where the company has not carried out any commercial activity for a time period of at least 2 (two) years from the effective date of this law; and/or (v) where the company has unpaid liabilities towards the tax administration for at least 2 (two) years from the effective date of this law.

### 2.3 On what grounds can the company be placed into each procedure?

The competent court shall decide the opening of the insolvency procedure whenever it has been convinced that the reason for the opening of such procedure is real, i.e. it has been convinced that the company is unable to pay its debts in due time or it is overloaded with debts according to the Bankruptcy Law.

### 2.4 Please describe briefly how the company is placed into each procedure.

The request for the opening of the insolvency proceedings may be submitted to the competent court either by the debtor or by a creditor. In addition, the Bankruptcy Law provides that with regard to legal entities the opening of insolvency proceedings can be filed also by the tax authorities in the case that the company incurs losses for a 3- (three) year period.

In addition, Tax Procedure Law provides that the Tax Authorities can file a request for the initiation of the insolvency proceedings by the Bankruptcy Court.

### 2.5 What notifications, meetings and publications are required after the company has been placed into each procedure?

A copy of the decision for the opening of the insolvency proceedings is sent to the creditors (each of them), to the debtor and to the debtors of the debtor. A copy of the decision is also sent to the NRC (it is made public at <http://www.qkr.gov.al/nrc/ vendime.aspx>) and to the Real Estate Registry Office. The decision is also published on the website of the court that has decided to open the insolvency proceedings.

In addition, the notification for the initiation and termination of the insolvency proceedings are published in the newspapers used for the official notifications of the court. Such notification shall contain information on the debtor and, specifically, its address and scope of activity.

## 3 Creditors

### 3.1 Are unsecured creditors free to enforce their rights in each procedure?

Once the insolvency proceedings have been opened, unsecured creditors cannot enforce their rights. All claims against the debtor are suspended and writs of execution cannot be enforced. All pending and new claims should be submitted to the Insolvency Administrator.

### 3.2 Can secured creditors enforce their security in each procedure?

According to the Bankruptcy Law, secured creditors are considered

as insolvency creditors and are entitled to preferential satisfaction compared to unsecured ones. However, the secured creditors cannot enforce their security immediately.

### 3.3 Can creditors set off sums owed by them to the company against amounts owed by the company to them in each procedure?

Creditors in Albania are not entitled to set off their claims against the liabilities of the debtor in the case that:

- i. The liabilities of an insolvency creditor towards the insolvency estate have arisen only after the opening of the insolvency proceedings.
- ii. An insolvency creditor has obtained the right to set off from another creditor after the opening of the insolvency proceedings.
- iii. An insolvency creditor has obtained the right to set off a claim through a transaction that ought to be avoided.
- iv. A creditor, whose claim should be satisfied from the unburden estate of the debtor, has a liability toward the insolvency estate.

## 4 Continuing the Business

### 4.1 Who controls the company in each procedure? In particular, please describe briefly the effect of the procedures on directors and shareholders.

The court may appoint an Insolvency Administrator whose work is supervised by the Insolvency Court and the Creditors' Meeting and the Creditors' Committee (certainly, if any). With the opening of the insolvency proceedings, the debtor is deprived of his rights to dispose and manage the insolvency estate unless the court decides otherwise. It is the Insolvency Administrator who is appointed to possess and manage the insolvency estate.

Upon decision of the court, the debtor may continue to possess and to manage the insolvency estate. In this case, the court shall appoint a supervisor to control the debtor's actions.

The directors, shareholders and other officers of the debtor are required to support the Insolvency Administrator in its tasks.

### 4.2 How does the company finance these procedures?

According to the Albanian Bankruptcy Law, in order to initiate the insolvency proceedings, there must be sufficient assets to cover the costs of the bankruptcy procedures. In the case that there are no funds to cover the costs of the insolvency proceedings, the Insolvency Court has the right to reject the request for the opening of the insolvency proceedings. However, the law provides that in this case, in order for the request to be approved, the applicant can make an advance payment, as determined by the court.

### 4.3 What is the effect of each procedure on employees?

The opening of the insolvency proceedings itself does not affect the existing employment contracts.

The Albanian legislation provides for an exhaustive list of cases of termination of the labour contract without cause. The termination due to insolvency is considered as termination with cause.

Please note that the law provides that the Creditors' Meeting decides that the workers of the debtor may receive from the bankruptcy estate an amount for living purposes; the Creditors'

Meeting decides on the size of the amounts to be received for such purposes.

#### 4.4 What effect does the commencement of any procedure have on contracts with the company and can the company terminate contracts during each procedure?

Claims related to periodic contracts that have been implemented by the debtor's counterparty until the opening of the insolvency proceedings have to be converted into monetary claims and are qualified as insolvency claims.

According to the Bankruptcy Law, contracts concluded between the debtor, in the capacity of the lessee or of the lessor, for the lease of immovable property(ies) or of their parts and for services to be provided related to them, shall continue to exist, in favour of the insolvency estate. The Insolvency Administrator, when the debtor is in the capacity of lessee, can terminate the contract by notifying the other party accordingly to the law.

In addition, the Bankruptcy Law provides that with regard to the service contracts, the Insolvency Administrator and the service provider may terminate the contract. In the case that it is the Insolvency Administrator who terminates the contract, the other party may request compensation as an insolvency creditor.

## 5 Claims

### 5.1 Broadly, how do creditors claim amounts owed to them in each procedure?

According to the Bankruptcy Law, insolvency creditors shall submit their claims in writing to the Insolvency Administrator within the time period as set out by the Insolvency Court in the decision for the opening of the insolvency proceedings. The law provides that the timeline for the submission of claims shall be between 15 and 90 days from the date of the decision. The notification for claims shall detail the nature and cause of the right claimed and the documents evidencing this claim should be attached to this notification.

### 5.2 What is the ranking of claims in each procedure? In particular, do any specific types of claim have preferential status?

The ranking of creditors is regulated by several articles of the Bankruptcy Law. This law provides that the court procedure shall not begin if there is insufficient money to cover the costs and expenses associated with the procedure. Then, the ranking of claims is in the following order:

- The right to separation from the insolvency estate under a title certificate.
- Secured creditors.
- Unsecured creditors.
- Unsecured creditors of lower ranking.
- Living means for the debtor.

However, please note that the Albanian Civil Code provides also for the priority of creditors and according to the Albanian Doctrine the ranking of claims as per the Civil Code prevails. Hence, the ranking of claims as provided in the Civil Code ought to be followed in a bankruptcy procedure. More specifically, Article 605 of the Civil Code provides the following ranking of creditors' claims:

1. Purchase Money Security.

2. Claims from salaries work or service relations and alimentary obligations, for a maximum of 12 months.
3. Claims for unpaid employment benefits with usuries, and also workers' credits for damages due to non-payment of above contributions by the employer.
4. Claims deriving from remunerations because of death events and health problems.
5. Copyright claims of authors (and their heirs) from complete or partial conveyance of their copyright, for obligations created during the last two years.
6. State claims, i.e. obligations owed to the budget and credits of the institute of social security, defined by law.
7. Claims, secured with securing charges, as per criteria defined by law.
8. Claims from job or service remuneration and alimentary obligations in excess of the limit defined in "b" herein.
9. Remuneration for brokerage under agency contracts, during the last year of remuneration.
10. Claims secured by mortgage or pledge (other than securing charge), pursuant the law, by the value of the things mortgaged or pledged.
11. Court expenses for the protection of the property and for executive actions, made in the common interest of creditors, from the sale proceeds.
12. Bank claims, which are not included in letter "e" and claims from voluntary contributions.
13. Claims for supply with seeds, chemical fertilisers, insecticides, water for irrigation and for cultivation and collection workings of agricultural productions, over yearly agricultural production (fruits), for which credits have been used.

Please note that Albania has ratified ILO Convention no.173/1992 and according to the Albanian Constitution, the international conventions ratified by law prevail over the domestic legislation.

In order to meet the expectations of the court, of the creditor(s) and of the debtor, this law classifies and includes as insolvency estate the debtor(s) property, the rights on the date of the initiation of the bankruptcy procedure and the assets that the debtor acquires while insolvency procedure is going on.

### 5.3 Are tax liabilities incurred during each procedure?

The opening of the insolvency proceedings does not affect the debtor's general tax regime. Therefore, insolvent companies are required to continue to pay taxes if the debtor continues the economic activity.

However, please note that in case that the insolvency procedure is aiming for the liquidation of the company, the Insolvency Administrator may request from the tax authorities to obtain the 'passive' status for the debtor, and this will avoid any further taxation.

## 6 Ending the Formal Procedure

### 6.1 Is there a process for "cramming down" creditors who do not approve proposals put forward in these procedures?

The Bankruptcy Law does not have specific provisions related to the process for "cramming down" creditors who do not approve the reorganisation plan. However, the Bankruptcy Law provides that the creditors and the debtor, according to the Code of Civil Procedure, may initiate a special appeal related to the court decision for the approval of the reorganisation plan.

## 6.2 What happens at the end of each procedure?

Insolvency proceedings must be terminated by the Insolvency Court and do not end automatically. The Insolvency Court may terminate the insolvency proceedings in the case that (i) all assets of the debtor have been distributed and the debtor has been liquidated, (ii) after three years since the reorganisation plan has been approved, there is no claim by the creditor, or (iii) the transaction for the sale of debtor has been completed.

## 7 Alternative Forms of Restructuring

### 7.1 Is it common to achieve a restructuring outside a formal procedure in Albania? In what circumstances might this be possible?

The law has no specific provisions for restructuring the company outside a formal procedure. However, prior to submission of the petition for the opening of the insolvency proceedings, the debtor is not prohibited to try to achieve an out-of-court restructuring.

It should be highlighted that although the law does not prohibit the out-of-court reorganisation, the directors of the company are obliged to request the immediate initiation of an insolvency proceeding, not later than 21 days from the date the legal entity becomes insolvent. In the case that they do not proceed with such request, they will be personally responsible for the compensation of the creditors if such creditors suffer losses because of the failure to file the petition within 21 days.

### 7.2 Is it possible to reorganise a debtor rather than realise its assets and business?

As explained above, according to Albanian legislation the reorganisation of the debtor is possible in the case that the reorganisation plan is approved by the creditors and the Insolvency Court.

### 7.3 Is it possible to achieve an expedited restructuring of the debtor by means of a pre-packaged sale? How is such a sale effected?

Albanian Legislation does not have specific provisions for an expedited restructuring of the debtor by means of a pre-packaged sale.

## 8 International

### 8.1 What would be the approach in Albania to recognising a procedure started in another jurisdiction?

According to the Bankruptcy Law, insolvency proceedings started in another jurisdiction are recognised in the case that (i) the debtor has his domicile or legal seat in that other jurisdiction, and (ii) the insolvency proceeding does not violate the principles of the Albanian Legislation, especially the constitutional provisions.

In addition the provision of other related legislation of general application ought to be respected. A final judgment rendered in any foreign court would be enforceable (i) upon the completion of appropriate judicial proceedings in Albania against any of its properties located in Albania according to the procedure provided by the Albanian legislation in force, and (ii) if the Albanian Court of Appeal does not ascertain any of the conditions below rendering foreign judgement unenforceable:

- (a) according to the provisions in force in Albania, the dispute does not fall within the competence of the foreign court in question;
- (b) the lawsuit and the hearing notice are not duly delivered to the absent defendant and in due time, thus refusing him the right to defence;
- (c) a different judgment is rendered by an Albanian court involving the same parties, subject and dispute;
- (d) an Albanian court is examining the same dispute before the foreign court judgment becomes final;
- (e) the foreign court judgment becomes final contrary to the provisions of the relevant legislation; and
- (f) the foreign court judgment is not in compliance with the fundamental principles of Albanian legislation.

The Albanian Court of Appeal conducts a review of the foreign court judgment, but only from a procedural perspective and it does not enter into the merits of the case.

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