



VOKSHI & LATA
LAW FIRM

BANKRUPTCY

LEGAL GUIDE TO INVESTING IN KOSOVO

16.BANKRUPTCY

Bankruptcy in the Republic of Kosovo is governed by Law No. 05/L-083 on Bankruptcy, serving as a pivotal legal process that provides businesses with a path to relief from financial obligations when they are unable to meet them, as they lose their solvency. This legal framework plays a crucial role in Kosovo's legislation, aiming to foster entrepreneurship, reduce the stigma surrounding business failures, and, ultimately, create a more favorable economic environment.

16.1. OUTCOMES

Bankruptcy proceedings in Kosovo can result in two key outcomes: reorganization and liquidation.

16.1.1. Reorganization

Reorganization is a bankruptcy procedure designed to assist a debtor in regaining financial stability within a specified timeframe and resuming business operations. Its primary goal is to prevent liquidation, preserve business viability, and promote economic stability and growth. This process allows financially distressed companies to restructure their operations by revising costs, production methods, and services, aiming to meet obligations to creditors and maintain their economic activities.

The reorganization process begins with a voluntary request by the debtor, who files the reorganization plan. The reorganization procedure is however mandatory for Small and Medium-sized Enterprises (SMEs) (prior to any liquidation procedure) and SMEs are required to submit a reorganization plan within thirty days of commencing bankruptcy proceedings. This plan, initially drafted by the debtor, undergoes a review and approval process by the court, with the involvement of creditors. The plan is approved only if it gains the support of at least 50% of the creditors through a voting process.

Throughout the reorganization process, the debtor retains control of the company, operating under the approved plan. Nevertheless, in cases where the court believes that appointing an administrator for the debtor's company would enhance the chances of the plan's success, such a decision may be taken.

The central goal of the reorganization procedure is the restoration of the financial stability of the debtor's company, ultimately enabling it to fulfill its obligations to creditors. To achieve this, the reorganization plan typically includes measures like debt restructuring, which may involve extending payment deadlines, offering structured payment plans, and most importantly, temporarily suspending payment enforcement actions.



If the debtor successfully fulfills all its obligations outlined in the reorganization plan, the court concludes that the reorganization procedure has been successful in rehabilitating the debtor, and declares the reorganization case closed, allowing the resumption of business operations without any hindrance.

While the Law on Bankruptcy strongly favors reorganization over liquidation, it's important to acknowledge that unanticipated situations can arise during the reorganization process, leading to a shift in proceedings towards liquidation. The Law on Bankruptcy outlines specific conditions under which the court may order this transformation:

Substantial or Continuing Loss: If there is a significant and ongoing loss to the debtor's estate, and there's no reasonable likelihood of rehabilitation.

Gross Mismanagement: In cases where the debtor's bankruptcy estate has been severely mismanaged.

Time: If more than one year has passed since the initiation of the reorganization case, although the court has the discretion to extend this period for an additional six months.

Insurance Neglect: When the debtor in possession, who is in charge of the company, fails to maintain appropriate insurance, consequently posing a risk to the bankruptcy estate.

Failure to Comply: If the debtor in possession does not adhere to a court decision.

Tax Obligations: When the debtor in possession fails to pay taxes owed or submit necessary tax returns on time after the case's initiation.

Plan Neglect: If the debtor in possession fails to file or confirm a plan within the timeframe established by a court decision.

Should the court determine that any of these circumstances exist, it will decide to convert the case from reorganization to liquidation, subjecting it to the regulations governing the liquidation procedure.

16.1.2. Liquidation

Liquidation involves the sale of debtor assets to satisfy the claims of creditors and typically occurs when reorganization is not feasible or likely to succeed. In Kosovo's Bankruptcy Law, liquidation is a process aimed at selling and distributing the debtor's assets to meet creditors' demands.

The liquidation procedure commences with a court decision, appointing a bankruptcy administrator who oversees the entire liquidation process. The bankruptcy administrator takes control of the debtor, undertaking steps to identify and maximize the bankruptcy estate, which will eventually be sold and distributed among the creditors in proportion to their claims.

The duties of the administrator include, but are not limited to:

Monetizing Assets: The administrator's primary responsibility is to efficiently convert assets within the bankrupt estate into cash, in the best interests of all creditors, ensuring prompt realization of their value.

Property Management: They bear responsibility for all properties entrusted to them, guaranteeing their proper care and effective management.

Information Duties: The administrator convenes and presides over meetings involving the creditors, promoting transparency and fostering communication among the creditors. Unless the court dictates otherwise, the administrator shares information regarding the bankruptcy estate and its administration with all parties concerned.

Financial Review: They meticulously scrutinize all financial matters related to the debtor, ensuring a comprehensive grasp of the financial situation.

Evidentiary Investigation: The administrator possesses the authority to investigate and substantiate claims as necessary to achieve the intended objectives, while also challenging inappropriate requests.

Final Report: Upon the conclusion of the case, the administrator diligently prepares and submits a comprehensive final report on the administration of the case to the court.

These duties of the bankruptcy administrator play a crucial role in maintaining a fair, transparent, and efficient bankruptcy process that serves the interests of all parties involved.

Before proceeding with asset liquidation, the law allows the administrator to, with the court's approval, transform the liquidation case into a reorganization case if the administrator can demonstrate that such a conversion is likely to result in greater fulfillment of the creditors' claims.

The Bankruptcy Law also provides detailed guidance on the sale of assets in the liquidation procedure. It outlines the administrator's responsibilities in arranging the sale, which may include conducting public auctions, engaging auction houses, or utilizing other forms of public offerings. The law also establishes criteria for determining the minimum sale price, emphasizing the administrator's obligation to consider professional assessments to ensure that the sale price aligns with or approximates the asset's fair value.

The law distinguishes between two types of creditors: secured and unsecured. Secured creditors have claims protected by a mortgage, pledge, or other liens on the bankruptcy estate, while unsecured creditors have claims without such protection, relying on a successful liquidation procedure for claim fulfillment.

The Bankruptcy Law mandates that the court closes the liquidation process under two circumstances:

- **Full Asset Conversion:** When the administrator demonstrates that all assets within the bankruptcy estate have been successfully converted into cash and distributed to creditors; or
- **No Further Beneficial Administration:** When the administrator establishes that continuing the case's administration would not significantly increase distributions to the creditors.

As the primary objective of liquidation is to fulfill creditors' claims through the sale of assets, this procedure concludes upon its successful execution. Consequently, the debtor's business activities are officially terminated, and this termination is noted on the Kosovo Business Registration Agency (KBRA).

16.2. PROCEEDINGS

Bankruptcy cases in Kosovo are managed by the Commercial Court. The legal procedures connected to bankruptcy proceedings can be initiated through voluntary actions taken by the debtor. Here, the debtor can choose to submit either a reorganization plan or a liquidation request. These submissions define the procedure's journey, navigating through verification and approval processes overseen by the court. It's important to note that the Commercial Court prioritizes bankruptcy procedures, ensuring their expedited handling and timely resolutions for all parties involved.



Involuntary bankruptcy proceedings commence upon the submission of a petition by two or more creditors. Two (2) or more creditors may submit a petition to commence a case against an eligible debtor when:

1. same debtor has failed to pay a debt due to each of the petitioning creditors, and
 - 1.1. each debt has been due and payable for at least ninety (90) days;
 - 1.2. the total amount of the debt due is at least three thousand (3,000) Euro in amount; and
 - 1.3. each debt is not conditional or subject to pending court proceeding or an ongoing arbitration; and
- 1.2. The debtor is generally not paying its debts as they become due, and the total of unpaid debts exceeded five thousand (5,000) Euro.

In summary, Kosovo's bankruptcy regulations offer a crucial legal framework for a fair, transparent, and sustainable financial system. They provide a safety net for individuals and businesses facing debt challenges, making them essential for both local and foreign investors engaging in economic activities in Kosovo. These regulations offer legal mechanisms to safeguard the companies' interests in the face of financial distress or business challenges.