

# International Comparative Legal Guides



## Restructuring & Insolvency 2020

A practical cross-border insight into restructuring and insolvency law

**14<sup>th</sup> Edition**

**Published by Global Legal Group, in partnership with INSOL International and the International Insolvency Institute (III), with contributions from:**

Allen & Gledhill LLP

Cleary Gottlieb Steen & Hamilton LLP

De Pardieu Brocas Maffei A.A.R.P.I.

Deloitte Kosova Sh.p.k.

Deloitte Legal Sh.p.k.

Dhir & Dhir Associates

Dirican | Gözütok

ENGARDE Attorneys at law

Gall

Gilbert + Tobin

Indrawan Darsyah Santoso

INSOL International

International Insolvency Institute (III)

Kennedys

Lennox Paton

Lenz & Staehelin

Macfarlanes LLP

Miyetti Law

Mori Hamada & Matsumoto

Noerr LLP

Paul, Weiss, Rifkind, Wharton & Garrison LLP

Pirola Pennuto Zei & Associati

SCA LEGAL, SLP

Schindler Rechtsanwälte GmbH

SOLCARGO

Stibbe

Synum ADV

Vassilev & Partners Law Firm

Waly & Koskinen Attorneys Ltd.



**ICLG.com**



ISBN 978-1-83918-040-8  
ISSN 1754-0097

Published by

**glg** global legal group

59 Tanner Street  
London SE1 3PL  
United Kingdom  
+44 207 367 0720  
info@glgroup.co.uk  
www.iclg.com

**Group Publisher**  
Rory Smith

**Sub Editor**  
Jenna Feasey

**Senior Editor**  
Sam Friend

**Head of Production**  
Suzie Levy

**Chief Media Officer**  
Fraser Allan

**CEO**  
Jason Byles

**Printed by**  
Stephens & George Print Group

**Cover image**  
www.istockphoto.com

Strategic Partners



# International Comparative Legal Guides

## Restructuring & Insolvency 2020

14<sup>th</sup> Edition

**Contributing Editor:**

**Jat Bains**  
**Macfarlanes LLP**

**©2020 Global Legal Group Limited.**

**All rights reserved. Unauthorised reproduction by any means, digital or analogue, in whole or in part, is strictly forbidden.**

### Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication.

This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

## Editorial Chapters

- 1** **INSOL's Role in Building Cross-Border Collaboration**  
Julie M. Hertzberg, INSOL International
- 4** **International Insolvency Institute – An Overview**  
Debra Grassgreen, International Insolvency Institute (III)

## Expert Chapters

- 7** **Restructuring in the Next Recession**  
Simon Beale & Tim Bromley-White, Macfarlanes LLP
- 12** **Dynamic Trends in Chapter 15**  
Cleary Gottlieb Steen & Hamilton LLP

## Q&A Chapters

- 19** **Albania**  
Deloitte Legal Sh.p.k.: Erlind Kodhelaj & Zhuljeta Mena
- 25** **Australia**  
Gilbert + Tobin: Dominic Emmett & Alexandra Whitby
- 33** **Austria**  
Schindler Rechtsanwälte GmbH: Martin Abram & Florian Cvak
- 39** **Bahamas**  
Lennox Paton: Sophia Rolle-Kapousouzoglou
- 45** **Belgium**  
Stibbe: Pieter Wouters & Paul Van der Putten
- 51** **Bermuda**  
Kennedys: Nick Miles & Lewis Preston
- 61** **Bulgaria**  
Vassilev & Partners Law Firm: Konstantin Vassilev
- 67** **England & Wales**  
Macfarlanes LLP: Jat Bains & Paul Keddie
- 74** **Finland**  
Waly & Koskinen Attorneys Ltd.: Tuomas Koskinen & Sami Waly
- 80** **France**  
De Pardiou Brocas Maffei A.A.R.P.I.: Joanna Gumpelson & Philippe Dubois
- 88** **Germany**  
Noerr LLP: Dr. Thomas Hoffmann & Isabel Giancristofano
- 95** **Hong Kong**  
Gall: Nick Gall, Ashima Sood & Kritika Sethia
- 101** **India**  
Dhir & Dhir Associates: Sachin Gupta & Varsha Banerjee
- 107** **Indonesia**  
Indrawan Darsyah Santoso: Immanuel A. Indrawan & Eric Pratama Santoso
- 113** **Italy**  
Pirola Pennuto Zei & Associati: Massimo Di Terlizzi
- 122** **Japan**  
Mori Hamada & Matsumoto: Daisuke Asai & Dai Katagiri
- 128** **Kosovo**  
Deloitte Kosova Sh.p.k.: Ardian Rexha & Vegim Kraja
- 134** **Mexico**  
SOLCARGO: Fernando Pérez Correa Camarena & Zulima González García
- 141** **Netherlands**  
Stibbe: Job van Hooff & Daisy Nijkamp
- 148** **Nigeria**  
Miyetti Law: Dr. Jennifer Douglas-Abubakar, Ikiemoye Ozoeze & Zada Amede Oputa
- 154** **Russia**  
Synum ADV: Alexander Zadorozhny & Artem Kazantsev
- 161** **Singapore**  
Allen & Gledhill LLP: Edward Tiong & Kenneth Lim
- 167** **Spain**  
SCA LEGAL, SLP: Pedro Moreira & Isabel Álvarez
- 175** **Switzerland**  
Lenz & Staehelin: Tanja Luginbühl & Dr. Roland Fischer
- 184** **Turkey**  
Dirican | Gözütok: Gökben Erdem Dirican & Ali Gözütok
- 191** **Ukraine**  
ENGARDE Attorneys at law: Dmytro Donenko & Artem Parnenko
- 198** **USA**  
Paul, Weiss, Rifkind, Wharton & Garrison LLP: Alan W. Kornberg & Elizabeth R. McColm

# Albania



Erlind Kodhelaj



Zhuljeta Mena

Deloitte Legal Sh.p.k.

## 1 Overview

### 1.1 Where would you place your jurisdiction on the spectrum of debtor to creditor-friendly jurisdictions?

Law no. 110/2016 “*On bankruptcy*” (the “**Bankruptcy Law**”) states that the main goal of a bankruptcy proceeding is the collective discharging of debtor’s obligations through reorganisation of activity or liquidation of all debtor’s assets and distribution of income.

The bankruptcy legislation has been amended several times and the new law aiming to better regulate insolvency situations was approved in 2016. The main purposes of the new law are, *inter alia*, the improvement of the regulatory framework for an effective bankruptcy procedure, the protection of business activity during bankruptcy proceedings, more restrictive measures for bad faith debtors, and clearer competences for bankruptcy administrators.

The Bankruptcy Law contains creditor-friendly tools, such as a debtor’s civil liability for late bankruptcy filing, initiation of bankruptcy proceedings upon request of the creditor, the right of creditors to vote on a material decision during bankruptcy proceedings, for example, reorganisation plan, etc.

The Bankruptcy Law is relatively new and the experience within the competent courts so far is therefore not substantial. Based on these considerations, it is too early to declare that the law and its implementation by the courts has established, in practice, a creditor-friendly environment.

### 1.2 Does the legislative framework in your jurisdiction allow for informal work-outs, as well as formal restructuring and insolvency proceedings, and to what extent are each of these used in practice?

The Bankruptcy Law has no specific provisions for informal work-outs and/or restructuring possibilities outside a formal court procedure.

The courts responsible for resolving bankruptcy cases are the commercial sections of the district courts in the Republic of Albania (“**Bankruptcy Court**”).

The Bankruptcy Law provides that, after the initiation of the bankruptcy proceeding, the Bankruptcy Court shall appoint a bankruptcy administrator who shall have all the administration competences of the administration body/ies of the debtor. Alternatively, the Bankruptcy Court may opt for the appointment of a supervisory administrator who shall be responsible for the supervision of the administration body of the debtor.

The Bankruptcy Law provides for two different types of reorganisation: (i) a reorganisation procedure; and (ii) a fast-track reorganisation procedure.

## 2 Key Issues to Consider When the Company is in Financial Difficulties

### 2.1 What duties and potential liabilities should the directors/managers have regard to when managing a company in financial difficulties? Is there a specific point at which a company must enter a restructuring or insolvency process?

In case the debtor is a legal entity, any member of the decision-making body/ies is obliged to file for bankruptcy within 60 days from the day he/she becomes aware, or should have been aware, of the state of insolvency.

By the definition provided in the Bankruptcy Law, the state of insolvency will be considered to be any state where the debtor is unable to pay its obligations in due time and/or a financial situation when the total value of the obligations of the debtor exceeds the total value of its assets.

If the above-mentioned members fail to file the request for bankruptcy in due time, the latter shall be personally liable for the compensation of damages caused to creditors, and subject to a sanction that may be imposed by the Bankruptcy Court for the prohibition of the directors/managers or the debtor to exercise any management duty for a period of one to five years, depending on the scale of the breach.

In addition, as per article 65 of the Bankruptcy Law, all directors/managers and other members of administrative bodies of the debtor have the obligation to collaborate with the bankruptcy administrator or the supervisory administrator appointed by the Bankruptcy Court.

### 2.2 Which other stakeholders may influence the company’s situation? Are there any restrictions on the action that they can take against the company? For example, are there any special rules or regimes which apply to particular types of unsecured creditor (such as landlords, employees or creditors with retention of title arrangements) applicable to the laws of your jurisdiction? Are moratoria and stays on enforcement available?

The debtor and creditors are the most important stakeholders in the financial crisis of a company. In particular, the debtor itself or the creditors may file for bankruptcy.

Regarding particular types of creditors, article 36 of the Bankruptcy Law provides that any individual who has the right of ownership, recognised by law, over an asset in the possession of the debtor, is entitled to request the exclusion of this asset from the bankruptcy estate. In this case, no stay of enforcement provisions will apply.

Related to the stays on enforcement, it is worth noting that article 69 of the Bankruptcy Law provides that, once the bankruptcy procedure has started, no further claims may be filed against the debtor and all such claims should be raised in accordance with the rights of the creditors as per the provisions of the Bankruptcy Law.

In addition, following the commencement of the bankruptcy proceeding, no new obligatory enforcement procedures may be imposed to the debtor, while the initiated enforcement procedures should be suspended.

As per article 70 of the Bankruptcy Law, the bailiff shall deliver to the bankruptcy administrator, within five days (upon public notification of the opening of the bankruptcy proceeding), any asset or income obtained from the selling of the debtor's assets and not yet delivered to the creditor, prior to the opening of the bankruptcy proceeding, in order to include it in the bankruptcy estate.

The suspension will be applied to the extent necessary to assure the assets for the continuation of the business activity of the debtor.

Lawsuits against the debtor may continue until a final decision is awarded. However, any compulsory execution will be subject to the above-mentioned suspension.

In cases when the court case particularly affects the bankruptcy estate or the business activity of the debtor, the bankruptcy administrator may request the transfer of the court case to the Bankruptcy Court.

### 2.3 In what circumstances are transactions entered into by a company in financial difficulties at risk of challenge? What remedies are available?

Article 79 of the Bankruptcy Law defines the right of the bankruptcy administrator/supervisory administrator/creditor to oppose any transaction performed by the debtor within a period of two years, prior to the opening of the bankruptcy proceeding, if such transactions have caused damage to the debtor's assets or have given an unjustified preference to certain creditors.

As per the same article, a damage exists in cases where the debtor executes transactions for which the values (cash or equivalent) received are substantially lower than the values given. The above may include, without being limited to, donations, transactions with related parties, transactions that give no profit to the debtor, and other cases that may be assessed as damaging by the Bankruptcy Court.

In view of the above, the Bankruptcy Court may decide to return any transferred property or amount to the bankruptcy estate. If such property or amount has been transferred to a third party, which is a *bona fide* buyer, the Bankruptcy Court may order the third party to deliver it to the bankruptcy estate along with the applicable interests, and such third party will have the same right of claim as the other creditors in the bankruptcy proceeding.

## 3 Restructuring Options

### 3.1 Is it possible to implement an informal work-out in your jurisdiction?

Pursuant to the Bankruptcy Law, even in cases of agreement with the creditors, the procedure may not be performed out

of court but rather should be followed and approved by the Bankruptcy Court.

For further details, please refer to questions 1.2 and 3.3.

### 3.2 What formal rescue procedures are available in your jurisdiction to restructure the liabilities of distressed companies? Are debt-for-equity swaps and pre-packaged sales possible? To what extent can creditors and/or shareholders block such procedures or threaten action (including enforcement of security) to seek an advantage? Do your procedures allow you to cram-down dissenting stakeholders? Can you cram-down dissenting classes of stakeholder?

The Bankruptcy Law is silent in relation to these types of transactions.

Any debt-for-equity swap or pre-packed sale may be performed pursuant to the provision of the Albanian Civil Code and Law 9901, dated 14 April 2008, "On Entrepreneurs and Commercial Companies", as long as these actions may contribute to the avoiding of insolvency and the triggering of the obligation to file a bankruptcy request.

Creditors may object to such procedures if they prove those procedures are intended to avoid the fulfilment of the obligations of the debtor toward them, or in cases when the creditors require the initiation of the bankruptcy proceeding.

Once bankruptcy has been initiated, any such transaction may be part of the reorganisation plan, which should be approved by the creditors' committee and the Bankruptcy Court, in which case objections of dissenting classes of stakeholders may be crammed down.

### 3.3 What are the criteria for entry into each restructuring procedure?

The initiation of a bankruptcy proceeding requires the filing of a request which must be approved by the Bankruptcy Court.

As mentioned in question 1.2. above, the Bankruptcy Law provides for two options of reorganisation: (i) a reorganisation proceeding; and (ii) a fast-track reorganisation proceeding. In cases when a reorganisation is not possible, the liquidation of assets is performed.

#### (i) Reorganisation procedure

Article 104 *et seq.* of the Bankruptcy Law provides that, after the opening of the bankruptcy proceeding, depending on the financial situation of the debtor, the creditors' committee may decide on the dissolution/liquidation or the reorganisation of the debtor.

In such cases, a plan of reorganisation may be filed with the Bankruptcy Court by:

- a) the bankruptcy or supervisory administrator;
- b) creditors with claims representing 20% or more of the total amount of claims; or
- c) the debtor themselves who may file it, immediately or at any time, along with the request, upon the opening of the bankruptcy proceeding.

The plan should contain measures to restructure the business, a general overview of the activity of the debtor and the circumstances causing difficulties, a list of applicable measures for the implementation of the plan, data on the amounts and assets to be used, a description of the proceedings of selling assets and debt-for-equity swaps, etc.

For the purposes of voting, creditors shall be divided into classes as provided in article 144 of the Bankruptcy Law (please see question 4.6). In principle, if the majority of claims of the

creditor (present or represented) vote for the approval of the plan, the latter is deemed accepted, thereby cramming down the dissenting voting creditors. The reorganisation plan, approved as stated above, shall be binding to all creditors, even those who have dissented in the proceeding or did not participate in the meeting.

#### (ii) Fast-track reorganisation.

On the other hand, the Bankruptcy Law (article 122 *et seq.*) provides that the debtor and the creditor may enter into an agreement drafted out of court, which must be approved by the Bankruptcy Court.

These provisions aim to provide the debtor with the possibility to overcome an inevitable situation of insolvency through an agreement with the creditors. The agreements may be executed when the parties can objectively foresee that the debtor will not be able to discharge its obligations in due time for a period of six months.

Upon execution of the agreement, the debtor is eligible to file a request with the Bankruptcy Court for the approval of a fast-track reorganisation proceeding.

The request for a fast-track reorganisation proceeding should include:

- a) 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;
- b) the proposal for reorganisation plan; and
- c) a notarial declaration evidencing the support of the creditor/creditors, representing 30% or more of the total amount of the claims registered in the debtor's account.

The request shall be examined by the Bankruptcy Court, which may decide on its approval to open a fast-track reorganisation proceeding and its appointment of a supervisory administrator.

The opening of the fast-track reorganisation proceeding shall not affect the right of the debtor to manage/dispose of the assets of the company, unless such actions are considered extraordinary, and as such are subject to the approval of the supervisory administrator.

As per the above provision, the main difference between the two reorganisation proceedings is that fast-track reorganisation proceedings are initiated from the debtor who has obtained the approval of the creditors on the matter.

As the Bankruptcy Law is relatively new, it is not yet possible to confirm whether fast-track reorganisation procedures are common in insolvency situations.

#### Liquidation

Apart from the reorganisation plan, the Bankruptcy Court may decide on the liquidation of the debtor's assets and dissolution of the company.

Liquidation may be requested by the debtor itself, at any time or when the reorganisation plan fails to be enforced, or by the supervisory or bankruptcy administrator, when commercial activity is interrupted.

Following the successful discharge of all obligations of the debtor to the bankruptcy creditors, the Bankruptcy Court shall decide on the termination of the bankruptcy proceeding and resolve the deregistration of the company from the commercial register.

#### 3.4 Who manages each process? Is there any court involvement?

Herein below is a short brief of the management of each process under the Bankruptcy Law:

- (i) **In the preliminary bankruptcy/reorganisation proceeding**, (the period between the acceptance of the bankruptcy/reorganisation filing by the Bankruptcy Court and the opening of the proceedings), the Bankruptcy Court may appoint a temporary bankruptcy administrator or temporary supervisory administrator.

The temporary bankruptcy administrator assumes the role of the managing body/ies of the debtor and manages the daily activity of the debtor, guarantees the safety of the debtor's assets, etc.

The supervisory administrator instead acts as supervisor of the actions performed by the managing body/ies of the debtor.

- (ii) **After the initiation of the bankruptcy/reorganisation proceeding**, the debtor has the right to manage/dispose of its assets under the surveillance of the supervisory administrator. This scenario occurs when the bankruptcy proceeding is initiated at the debtor's request. The management rights and duties will be vested to the bankruptcy administrator, in cases when the bankruptcy proceeding is initiated at the creditors' request.
- (iii) **In the reorganisation proceeding**, the debtor's assets may be managed by the bankruptcy administrator or the debtor themselves under the surveillance of the supervisory administrator, based on the decision of the Bankruptcy Court.
- (iv) **In a fast-track reorganisation proceeding**, the debtor has the right to manage/dispose of the assets of the company, unless such actions are considered extraordinary, and as such will be subject to the approval of the supervisory administrator.
- (v) **In dissolution/liquidation**, the debtor loses his right to manage/dispose of his assets, a right that is vested to the bankruptcy administrator.

In light of the above, it is clear that the Bankruptcy Court is always involved in bankruptcy proceedings.

**3.5 What impact does each restructuring procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? What protections are there for those who are forced to perform their outstanding obligations? Will termination and set-off provisions be upheld?**

In principle, the opening of bankruptcy proceedings does not affect contracts already in force, which shall continue to be valid and effective. The bankruptcy administrator or the debtor, under the supervision of the supervisory administrator, may terminate the contract if this decision benefits the bankruptcy proceeding.

In addition, the Bankruptcy Law provides special provisions for the following contracts:

- a) **Lease agreements** which cannot be terminated upon the opening of bankruptcy proceedings, neither for failure to pay the lease price prior to the opening of the bankruptcy proceeding, nor for the deterioration of the financial situation of the debtor.
- b) **Order contracts** which affect the bankruptcy estate shall be terminated upon the opening of the bankruptcy proceeding.
- c) **Public contracts** which, as a rule, are not terminated due to the initiation of bankruptcy proceedings; however, the public administration may terminate the contract when there exists an objective reason to believe that the fulfilment of the contract will be at risk.

### 3.6 How is each restructuring process funded? Is any protection given to rescue financing?

Pursuant to article 30 of the Bankruptcy Law, the bankruptcy or supervisory administrator, together with the debtor, may obtain a loan at any time following the opening of the bankruptcy proceeding upon prior approval of the creditors' committee and the Bankruptcy Court. Said loan should be obtained with the purpose of continuance of the activity of the debtor and in the best interest of the creditors.

Before the approval of the loan by the Bankruptcy Court, the latter should notify the secured creditors by defining a five-day term to file their claims, if the secured assets shall be adversely affected.

For purposes of approving the loan, the Bankruptcy Court shall consider, *inter alia*, the duration of the bankruptcy proceeding, the debtor's possibility to successfully restructure, and whether the loans will increase that opportunity, etc.

A special appeal may be filed by each creditor against the decision of the Bankruptcy Court if the cost of the loan exceeds any benefit arising from such loan.

## 4 Insolvency Procedures

### 4.1 What is/are the key insolvency procedure(s) available to wind up a company?

The key procedure available in cases of insolvency in the Albanian jurisdiction to wind up a company is "bankruptcy", which is regulated by the Bankruptcy Law.

As mentioned above, the bankruptcy proceeding is initiated by virtue of a written request of the debtors themselves or the other creditors, which is afterwards approved by a decision of the Bankruptcy Court.

### 4.2 On what grounds can a company be placed into each winding up procedure?

Please see question 3.3 above.

### 4.3 Who manages each winding up process? Is there any court involvement?

Please see question 3.4 above.

### 4.4 How are the creditors and/or shareholders able to influence each winding up process? Are there any restrictions on the action that they can take (including the enforcement of security)?

In a bankruptcy proceeding, shareholders shall make public any situation related to the bankruptcy proceeding, assist the bankruptcy administrator while fulfilling their tasks, etc.

Shareholders do not have the right to vote for a reorganisation plan, unless said plan provides for a change in the structure of the share capital or when they are creditors of the debtor.

Regarding the creditors, the latter has an important role, in particular via the creditors' committee, which assists and supervises the activity of the bankruptcy administrator and the right to vote for a reorganisation plan, etc.

With regard to the enforcement of security, as per article 141 of the Bankruptcy Law, the bankruptcy administrator or the

debtor upon approval of the supervisory administrator, may dispose of any collateral as long as the disposal value of such collateral is higher than the obligation.

In cases when the value of the collateral is smaller or equal to the obligation toward the secured creditor, the bankruptcy administrator or the debtor upon approval of the supervisory administrator may decide to separate such collateral for purposes of payment to the secured creditor. However, even in this case, the procedure will be under the discretion of the bankruptcy administrator.

### 4.5 What impact does each winding up procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? Will termination and set-off provisions be upheld?

Please see question 3.5 above.

### 4.6 What is the ranking of claims in each procedure, including the costs of the procedure?

The Bankruptcy Law expressly provides the ranking of claims to be followed in a bankruptcy proceeding, such as below:

- Secured claims up to the value of the property serving as collateral.
- Claims from preferred creditors (i.e. employee claims for dismissal, work and health matters, alimony, tax obligations, etc.).
- Unsecured creditors' claims.
- Final creditors (i.e. penalties as per the Civil Code, Criminal Code, etc.).
- Shareholders' claims.
- Despite the above ranking, the Bankruptcy Law provides that the payment of said creditors, in the quality of the bankruptcy creditors, shall be made, taking into account the need to be prioritised from the payment of the creditors of the bankruptcy proceedings (i.e. creditors for the expenses of the bankruptcy proceeding and administrative expenses of the bankruptcy proceeding, such as court expenses, administrator's remuneration, etc.).

### 4.7 Is it possible for the company to be revived in the future?

Upon the final distribution of assets, the Bankruptcy Court shall decide on the termination of the bankruptcy proceeding.

In cases of legal entities, when all creditors are fully discharged, the full distribution of income after the liquidation of the assets shall bring the dissolution of the legal entity. In this case, the decision of the Bankruptcy Court should be filed with the commercial register, so the debtor may be removed from such register and consequently cease to exist.

## 5 Tax

### 5.1 What are the tax risks which might apply to a restructuring or insolvency procedure?

The Bankruptcy Law does not provide for any tax implications arising specifically from bankruptcy proceedings. As mentioned in question 4.6, tax authorities are ranked by the law as preferred creditors.

## 6 Employees

### 6.1 What is the effect of each restructuring or insolvency procedure on employees? What claims would employees have and where do they rank?

Employment contracts shall remain valid irrespective of the opening of a bankruptcy proceeding.

After the opening of a bankruptcy procedure, the bankruptcy or supervisory administrator may suggest the termination or amendment of employment contracts. The termination or amendment of employment contracts is governed by the Albanian labour legislation. Under the labour legislation, the insolvency constitutes an objective economic reason for terminating or amending employment contracts.

The claims related to the termination or amendment of employment contracts are presented to the Bankruptcy Court. The claims of employees deriving from the employment contracts are ranked as privileged credits.

## 7 Cross-Border Issues

### 7.1 Can companies incorporated elsewhere use restructuring procedures or enter into insolvency proceedings in your jurisdiction?

Pursuant to article 11 of the Bankruptcy Law, bankruptcy proceedings shall be reviewed and administered by the Bankruptcy Court, where the debtor has its centre of main interest.

In principle, the centre of main interest is the place where the debtor conducts the administration of its interests on a regular daily basis. In practice, in case of a company or legal person, the place of the registered office shall be presumed to be the centre of main interest, unless proved otherwise.

In light of the above-mentioned provision, in principle, companies incorporated in other jurisdictions may file a bankruptcy filing in Albania only if the debtor has its centre of main interest in Albania. It should be noted that the Bankruptcy Court where the request is filed will be competent to evaluate if such court has jurisdiction to examine a particular bankruptcy case.

In addition, the Bankruptcy Law provides that, following the recognition of a main foreign bankruptcy proceeding (please refer to question 7.2), a bankruptcy proceeding may be initiated under Albanian legislation only in cases where the debtor has assets located in Albania.

### 7.2 Is there scope for a restructuring or insolvency process commenced elsewhere to be recognised in your jurisdiction?

As per article 184 of the Bankruptcy Law, in order to recognise a foreign bankruptcy proceeding in Albania, a foreign representative must file a request near the Bankruptcy Court, by submitting the following documents:

- (i) a copy of a certificate proving the decision of a foreign court to open a foreign bankruptcy proceeding, or a copy of a certificate issued from the foreign court confirming the existence of such proceeding, and the appointment of the foreign representative;
- (ii) in the absence of the documents indicated in point (i) hereinabove, any other adequate proof, which shall be accepted by the Bankruptcy Court, proving the existence of the foreign proceeding and the appointment of the foreign representative; and
- (iii) a declaration, to accompany the request, identifying all the foreign proceedings and any proceeding under Albanian legislation in relation to a particular obligation.

Upon the successful filing of the above, the court may decide that the foreign bankruptcy proceeding shall be recognised under the Bankruptcy Law, either as a foreign main proceeding if Albania is the country where the debtor has its centre of main interest, or as a secondary proceeding in other cases.

### 7.3 Do companies incorporated in your jurisdiction restructure or enter into insolvency proceedings in other jurisdictions? Is this common practice?

The Bankruptcy Law does not contain any provision which relates to the possibility of companies incorporated in Albania to initiate a bankruptcy proceeding in other jurisdictions.

The only provision dealing with foreign jurisdictions is article 174 of the Bankruptcy Law. Said article stipulates that the bankruptcy administrator shall be authorised to act outside the Republic of Albania, on behalf of a proceeding initiated under Albanian bankruptcy legislation, as permitted by the applicable foreign legislation.

## 8 Groups

### 8.1 How are groups of companies treated on the insolvency of one or more members? Is there scope for co-operation between officeholders?

The Bankruptcy Law does not set different rules or procedures regarding groups of companies involved in an insolvency situation.

## 9 Reform

### 9.1 Are there any other governmental proposals for reform of the corporate rescue and insolvency regime in your jurisdiction?

For the time being, no new reforms of the Albanian corporate rescue and insolvency regime have been announced.





**Erlind Kodhelaj** is a Senior Managing Associate at Deloitte Legal Sh.p.k. He joined the practice in 2015 from a leading law firm in Albania. Erlind has more than 12 years of experience specialised in commercial/corporate law, legal tax advice, the oil sector, employment law, competition, concessions, public procurement, project financing, real estate, and privatisation. He is the author of several papers and chapters in international legal publications such as *ICLG, Global Legal Insights, CEE Legal Matters*, etc.

He has participated in several projects conducted in Albania, with involvement to project financing regarding PPP, concessions and privatisations in the fields of oil, energy and public infrastructure. He is a member of Albanian Bar Association.

Erlind is fluent in Albanian (native speaker), English and Italian.

**Deloitte Legal Sh.p.k.**

Rruga Faik Konica  
Ndërtesa nr. 6, Hyrja nr. 7  
Tirana, 1010  
Albania

Tel: +355 4 451 7906  
Email: [ekodhelaj@deloittece.com](mailto:ekodhelaj@deloittece.com)  
URL: [www.deloitte.com/al](http://www.deloitte.com/al)



**Zhuljeta Mena** is an Associate at Deloitte Legal Sh.p.k. and she joined our practice in 2018.

She is specialised in commercial/corporate law, employment, migration services, and data protection. Zhuljeta is a law graduate from Tirana University in Albania (2016) and holds a Master's in Civil Law from Tirana University in Albania (2018). Zhuljeta is a Member of the Albanian Bar Association.

Zhuljeta is fluent in Albanian (native speaker), English and Spanish.

**Deloitte Legal Sh.p.k.**

Rruga Faik Konica  
Ndërtesa nr. 6, Hyrja nr. 7  
Tirana, 1010  
Albania

Tel: +355 4 451 7906  
Email: [zmena@deloittece.com](mailto:zmena@deloittece.com)  
URL: [www.deloitte.com/al](http://www.deloitte.com/al)

Deloitte Legal Sh.p.k. is a limited liability company established and organised in accordance with the laws of Albania. Deloitte Legal Sh.p.k. is an affiliate of Deloitte Central Europe Holdings Limited, the member firm in Central Europe of Deloitte Touche Tohmatsu Limited.

The firm was established, having as its priority and goal, the imperative of serving with competence and due expertise. The firm works with local and multinational companies and not-for-profit organisations, government bodies and individuals, in areas of law encompassing commercial, employment, banking, tax, competition law, construction and real estate, intellectual property, dispute resolution, etc.

Deloitte Legal Sh.p.k. is composed of highly trained professionals with a broad range of experience in legal issues affecting the Albanian market.

[www.deloitte.com/al](http://www.deloitte.com/al)

**Deloitte.**  
Legal

# ICLG.com

## Current titles in the ICLG series

Alternative Investment Funds  
Anti-Money Laundering  
Aviation Finance & Leasing  
Aviation Law  
Business Crime  
Cartels & Leniency  
Class & Group Actions  
Competition Litigation  
Construction & Engineering Law  
Consumer Protection  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Investigations  
Corporate Tax  
Cybersecurity  
Data Protection  
Derivatives  
Designs  
Digital Business

Digital Health  
Drug & Medical Device Litigation  
Employment & Labour Law  
Enforcement of Foreign Judgments  
Environment & Climate Change Law  
Family Law  
Financial Services Disputes  
Fintech  
Foreign Direct Investment Regimes  
Franchise  
Gambling  
Insurance & Reinsurance  
International Arbitration  
Investor-State Arbitration  
Lending & Secured Finance  
Litigation & Dispute Resolution  
Merger Control  
Mergers & Acquisitions  
Mining Law  
Oil & Gas Regulation

Outsourcing  
Patents  
Pharmaceutical Advertising  
Private Client  
Private Equity  
Product Liability  
Project Finance  
Public Investment Funds  
Public Procurement  
Real Estate  
Renewable Energy  
Restructuring & Insolvency  
Sanctions  
Securitisation  
Shipping Law  
Telecoms, Media & Internet  
Trade Marks  
Vertical Agreements and Dominant Firms  
Workplace Pensions