

The development of insolvency law in Kosovo

Drini Grazhdani reports on the development of new legal frameworks following the collapse of the country's banking system at the end of the war in 1999



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Following the end of the Kosovo war in 1999, the country's governing structures including its banking system had collapsed. The rush to establish legal frameworks and governing mechanisms caused gaps in various areas.

One of those areas was insolvency proceedings. Four years after the war ended, in 2003, the provisional Self-Government of Kosovo adopted the UNMIK² Regulation No. 2003/7 on Liquidation and Reorganisation of Legal Persons in Bankruptcy. In 2016, this Regulation was replaced by the Law on Bankruptcy,³ which was adopted by the Kosovo Parliament.

This law has been harmonised with EU Regulation 2015/848 on insolvency proceedings (recast)⁵. The new Law on Bankruptcy includes many features left out by the previous regulation. The adoption of this law was positively evaluated, as a result of which Kosovo improved its position in the World Bank Doing Business Report,⁶ jumping from 163rd to 43rd place.⁷

In addition, in March 2018, the Parliament of Kosovo adopted the new Law on Business Organisations,⁸ which regulates bankruptcy and insolvency proceedings for limited liability companies, joint stock companies, the enforcement of creditor claims on a limited liability company subject to voluntary dissolution, as well as protection of creditors upon a cross-border merger.

Yet, the enforcement of the new laws remains questionable, leaving interested parties

confronting unwritten practices in the context of different insolvency procedures.

Main features of the Kosovo Law on Bankruptcy

General principles of the Law on Bankruptcy

The new Law on Bankruptcy addressed the weakness of the UNMIK regulation, which did not outline different principles applicable to bankruptcy or insolvency. The Law on Bankruptcy states that, in liquidation proceedings, the courts shall maximise the overall return to all creditors⁹ and shall consider the bankruptcy proceedings as urgent proceedings.¹⁰ Moreover, the court shall ensure the avoidance of any kind of suspension or interruption of bankruptcy proceedings. Furthermore, creditors shall have equal priority to shares in accordance with the *pari passu* principle¹¹ and, upon the completion of liquidation proceedings, the debtor:

*"Shall not be the owner of its assets at the conclusion of the liquidation proceeding and shall be removed as active business from the registry of businesses with the designation 'liquidated'."*¹²

*"Shall be noted in every new registration of a business by the debtor and close family members for five (5) years from the day of conclusion of the bankruptcy proceedings and the fact that the individual debtor has become bankrupt shall be noted in the Credit Registry of the Central Bank of the Republic of Kosovo."*¹³

The identity of debtors

The UNMIK Regulation No. 2003/7 on liquidation and reorganisation of legal persons in bankruptcy did not recognise natural persons as debtors. Natural persons had no legal responsibilities and were free to establish new businesses, even where if they may have been involved in previous bankruptcy proceedings of legal entities. Nonetheless, in Article 4, the new Law on Bankruptcy states that:

"2.4. The individual debtor shall not be the owner of its business assets administered in the bankruptcy proceedings at the conclusion of the liquidation proceedings. The fact that the individual debtor has become bankrupt shall be noted in the business registry in every new registration of a business by the debtor and close family members for five (5) years from the day of conclusion of the bankruptcy proceeding and the fact that the individual debtor has become bankrupt shall be noted in the Credit Registry of the Central Bank of the Republic of Kosovo."

Jurisdiction

The new Law on Bankruptcy places the cases of insolvency/bankruptcy under the jurisdiction of the Basic Court in Prishtina, Division of Commercial Matters, a change from the UNMIK Regulation, which called for bankruptcy cases to be heard by the District Economic Court within the geographic area in which the debtor's principal place of business was located. With the new law, parties have the right to appeal against the decision made by the Basic Court of Prishtina by

applying to the Division of Commercial Matters of the Court of Appeals.

Cross-border bankruptcy/insolvency

The new Law on Bankruptcy covers all aspects of cross-border insolvency/bankruptcy proceedings in its Chapter IX. This was completely missing in the UNMIK regulation it replaced.

Possession of the estate

Under the previous regulation on liquidation and reorganisation of legal persons in bankruptcy, an administrator was automatically appointed by the court.¹⁴ In the new Law on Bankruptcy, the debtor can now choose between an administrator to be in possession of the estate or be removed from the estate by the court.

Expedited proceedings for Small and Medium Enterprises (SMEs) and pre-agreed plans

The new Law on Bankruptcy has included a chapter covering Small and Medium Enterprises (SMEs). According to Article 11, SMEs are defined as business organisations which have an annual turnover of up to €1 million or up to 25 employees.

According to Article 12, proceedings involving an SME debtor shall be treated as reorganisation cases, with the SME required to file a reorganisation plan within 30 days from the day of bankruptcy proceedings being opened. Under Chapter II, Article 13, the Law on Bankruptcy also provides for the appointment of a “Monitor” to assist in formulating a reorganisation plan.

The Monitor, after his/her appointment, shall consult with the debtor regarding the debtor’s business, its prospects and whether a plan that creditors could accept can be formulated.

Implementation

Although the legal framework governing bankruptcy in Kosovo has evolved significantly since 1999 to reflect international best

principles and modern developments, the courts are lagging behind in developing practices in relation to insolvency and bankruptcy proceedings largely because of the business community’s distrust of bankruptcy proceedings.

The first insolvency cases in Kosovo were filed in 2010. Since then, there have been a total of 29 cases filed, out of which 4 cases were filed after the adoption of the new law. Although this number is very low, this provides an opportunity for the courts to start building the trust of creditors and debtors to consider court proceedings as a suitable remedy in times of financial difficulties. This will also provide courts with opportunities to develop practices to enhance legal security for parties entering bankruptcy.

The small number of court proceedings to date has also been influenced by the heavy reliance of creditors on taking security interests in movable and immovable personal property, as well as in personal, bank, and corporate guarantees, mainly due to the efficient enforcement system in Kosovo and developed practice and legislation in these areas. In addition, the lack of reliable financial reporting and the underdeveloped corporate governance structures in Kosovo further affect recourse to insolvency/bankruptcy as an alternative to the usual pattern of asset-security enforcement.

The most recent legislation: The Law on Business Organisations

As mentioned earlier, in March 2018, the Parliament of Kosovo adopted a new Law on Business Organisations,¹⁵ which, *inter alia*, regulates bankruptcy and insolvency proceedings in provisions including: Chapter IX on the Dissolution of a Limited Liability Company and Decision to Initiate the Bankruptcy Procedure; Chapter XIII on the Voluntary Dissolution of a Joint Stock Company and Decision to Initiate Bankruptcy Procedure; Article 117 on the Enforcement

of Creditor Claims on a Limited Liability Company Subject to Voluntary Dissolution; and Article 236 on the Protection of Creditors upon a Cross-Border Merger. Since this is a very recent law, it remains to be seen if it will have any effect in increasing the number of insolvency cases filed in courts.

Conclusion

Kosovo, as the newest country in Europe, has made great progress in adopting new laws that allow for proper insolvency/bankruptcy proceedings. Nonetheless, the major issue remains the enforcement of such laws. The capacity of the courts to deal with insolvency cases needs to be improved and the trust of the companies in the courts needs to be increased. ■

Footnotes:

- 1 Disclaimer: The author’s views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.
- 2 UNMIK stands for the United Nations Mission in Kosovo, which was established by UN Resolution 1244 and on which was conferred legislative powers.
- 3 UNMIK Regulation No. 2003/7 on liquidation and reorganisation of legal personal in bankruptcy, available at: www.unmikonline.org/regulations/2003/RE2003_07.pdf
- 4 Law on Bankruptcy (05/L-083), available at: www.kuvendikosoves.org/common/docs/ligict/05-L-083%20a.pdf
- 5 *Ibid.*, Art. 1.
- 6 See World Bank, Doing Business 2018, Economy Profile of Kosovo, 4, available at: www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Profiles/Country/KSV.pdf
- 7 See World Bank, Doing Business 2017, 15, available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/25562/109903-WP-DB17-PUBLIC-Kosovo.pdf?sequence=1&isAllowed=y>
- 8 See Official Gazette of the Republic of Kosovo, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2585>
- 9 Law on Bankruptcy (05/L-083), above note 4, Article 4.
- 10 *Idem.*
- 11 *Idem.*
- 12 *Idem.*
- 13 *Idem.*
- 14 See UNMIK Regulation No. 2003/7, above note 3, Article 17.1.
- 15 See Official Gazette of the Republic of Kosovo, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2585>



THE COURTS ARE LAGGING BEHIND LARGELY BECAUSE OF THE BUSINESS COMMUNITY’S DISTRUST OF BANKRUPTCY PROCEEDINGS

