REPUBLIC OF ALBANIA
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Draft Regulation

No.______/2017

ON OUT OF COURT RESTRUCTURING AGREEMENTS FOR FINANCIALLY DISTRESSED DEBTORS

The present Regulation is enacted pursuant to the mandate conferred upon the Government of the Republic of Albania by Article 79.4 ç) of the Law on Bankruptcy nº 110/2016, of the Republic of Albania. The said article states that: *"Accelerated reorganization agreements entered into out of the court between the debtor and the creditors, should be supported in a regulation on extra-judiciary agreements of accelerated reorganization. This regulation will be approved by decision of Council of Ministers, within 6 months from the entry into force of this law"*.

SECTION I
GENERAL PART

Article 1. The purpose of the Regulation

1. This Regulation aims for the creation of a framework to foster informal, out of court collective agreements between the debtor and its creditors with a view to solve viable businesses experiencing financial distress.

2. The agreements referred to in the previous paragraph shall be called *Debt Restructuring Agreements* (DRA).

Article 2. The scope of the DRA

1. DRAs are fully negotiated and concluded out of court, with the exceptions envisaged in article 3 of this Regulation.

2. DRAs must be informal. Informality implies that a mediator, an insolvency professional or any other third party will only participate if the parties voluntarily

decide to involve one or more of the said professionals. Informality also implies that the parties are not obliged to observe any specific form to conclude a DRA, subject to the rules envisaged in article 3 of this Regulation.

3. DRAs must be collective. Collectivity implies the participation of one or more creditors that, alone or combined, reach the majority thresholds envisaged in article 11 of this Regulation.

4. DRAs seek to facilitate the rescue of viable businesses. Hence, the agreement is only apt for viable businesses whose viability will be sustained by the attainment and implementation of the viability plan included in the DRA.

5. DRAs are fully voluntary and bind only those creditors that vote in favour of the agreement or that voluntarily agree to being bound by it. Any type of creditor, secured or unsecured, and irrespective of its class in case of insolvency, may participate in the agreement, although the debtor or the creditor (s) that propose the agreement will decide who is to be involved.

6. Financial creditors participating in the negotiation of a DRA will be deemed subject to the Out of Court Workout Principles of Albania, as set out in Article 2 of the Law nbr 10385 of 24.02.2011 “O Intermediation for the Resolution of Disputes”.

Article 3. Open form and recourse to the Court

1. DRAs must be drafted in written form and its content must include all the necessary requirements set forth in article 10 of Section III of this Regulation. There are no additional mandatory formal requirements, and the parties are free to negotiate as they think fit.

2. DRAs may be concluded following the Standard Procedure described in articles 6-8 of this Regulation. The Standard Procedure as regulated in those articles will be deemed applicable unless the parties expressly state otherwise at the commencement of the negotiation.

3. In case the standard procedure is not followed, the debtor may request the Court to issue an interim measure staying executions against the property of the debtor based on article (s) --- of the [Code of Civil Procedure/Applicable Law].

4. The stay of executions will only affect those creditors that have been previously notified of the existence of negotiations and that have been invited to participate. The stay may not last longer than 3 months from the moment of issuance of the judicial order.

4. Good faith in the negotiation process

1. All information provided must be truthful and relevant to the purpose of concluding a DRA.

2. The debtor should provide participating creditors reasonable and timely access to all relevant information relating to its assets, liabilities, business activity and prospect of viability, in order to enable a proper evaluation of its financial situation.

3. The debtor and participating creditors agree to negotiate in good faith, disclosing all the relevant information objectively necessary for the conclusion of the agreement. (…)

5. Confidentiality

1. All non-public information provided by the debtor or by creditors in the context of the negotiations leading to a DRA will be deemed confidential. This includes oral and written communication, as well as any documents, electronic files and, generally, data provided in any kind of format.

2. The information disclosed in the context of the negotiations may not be made public, shared with any non-participating party or used in any way other than in the context - and for the purpose- of reaching a DRA, unless the owner of the information expressly consents.

3. The breach of the duty of confidentiality generates the duty to compensate any damages stemming from the said breach, including –but not limited to- those caused as a consequence of the failure to reach a DRA. In this regard, the need to compensate will include the damages suffered by the debtor and its creditors.

SECTION II

THE STANDARD PROCEDURE

Article 6. Multi-party negotiations

1. Unless otherwise expressly stated in the Regulation, the following rules shall apply to negotiations conducted between the debtor and two or more creditors.

2. The Standard Procedure will be deemed commenced upon reception by the debtor of a formal declaration of consent by two or more participating creditors. The consent may be expressed by any means that allow proof of reception. Additional creditors may adhere to the Procedure at a later moment.

3. The parties may wish to determine the exact date and time of commencement by deed before a notary public.

Article 7. The Standstill Agreement

1. During the negotiation period, creditors will be bound by a “Standstill” agreement. Unless the parties decide on a shorter period, the Standstill agreement will last for 3 months, which can be extended by creditors when deemed necessary.

2. During the implementation of the Standstill, all participating creditors will refrain from taking any steps to enforce their claims against the debtor or (otherwise than by disposal of their debt to a third party) to reduce their exposure to the debtor.

3. During the Standstill, the position of creditors relative to other creditors and each other should not be prejudiced, or the effects decribed in paragraph 2 above will automatically terminate.

4. During the Standstill, the debtor must not take any action which might adversely affect the prospective return to relevant creditors (either collectively or individually) as compared with the position at the day in which the Standstill started.

5. During the Standstill, the debtor must not execute any action that may adversely affect the negotiations towards a DRA. Creditors participating in a negotiation period and subject to a Standstill must be notified of any act of disposition outside the ordinary course of business, acts of extraordinary administration of the business, or of a sale of the shares of the entitiy that affects control over the debtor.

Article 8. Creditor coordination

1. In negotiations with more than 3 creditors, a committee may be formed with all participating creditors, in so far as parties expressly consent and it is considered necessary to avoid coordination problems.

2. Unless otherwise stated by the parties, the creditor with the largest exposure, secured or unsecured, will act as coordinator of the creditors in the negotiation.

3. The coordinator will be a representative of creditors in communications with the debtor.

4. Each creditor individually retains its right to vote the agreement, and cannot be bound by a majority vote within the committee, unless all participating creditors agreed to make majority agreements binding, or unless the creditor voluntarily agrees to be bound for a particular aspect of the negotiation.

Article 9. Non-enforceability of early acceleration clauses

The mere commencement of a Standard Procedure or generally of a negotiation leading to a DRA may not be deemed sufficient to trigger the automatic early termination of a contract or allow the foreclosure of security rights.

SECTION III

THE AGREEMENT AND ITS EFFECTS

Article 10. The content of the agreement

1. DRA´s must include a restructuring of the debtor´s liabilities, either by (i) postponing the maturity of the debt or the date of repayment of the obligation, (ii) reducing the amount owed, (iii) substituting the existing outstanding obligations by new ones with a later maturity date or with a smaller amount, (iv) providing new money or credit; or (v) a combination of the previous options. The foregoing constitute the minimum mandatory content of the DRA.

2. DRAs may also include measures aimed at the restructuring of the business.

3. The DRA must necessarily include the continuation of the business activity of the debtor.

4. The content of the DRA must be shaped to ensure, to the extent possible based on objective, economic criteria, the viability of the business in the mid term.

Article 11. The adoption of the agreement

1. The agreement must be voted by creditors holding claims that amount to 60% of the debtor´s total debts or more. The relevant date for the determination of the threshold will be the date of the adoption of the agreement.

2. When the agreement concerns a group of companies, the threshold will need to be met individually in each group member concerned by the agreement as well as in the consolidated liabilities of all group members concerned. The loans and moneys owed to other group members will not be counted for the formation of the majorities.

3. Compliance with the required voting thresholds will be determined by the auditor of the debtor. If the debtor does not have an auditor in office, or at the request of participating creditors holding 10% or more of the total claims, an independent auditor will be appointed by the [Commercial Registry??].

Article 12. The protection of the agreement

1. DRAs concluded with the requirements set forth in the previous two articles would be protected from avoidance actions in case the debtor became insolvent and insolvency proceedings were commenced in accordance with the Bankrupcty Law no 110/2016.

2. The protection from avoidance actions does not only concern the DRA itself, but also every contract, legal act, creation of security right, guarantee or payment, whatever its nature and form, executed in the context of the DRA.

Article 13. The treatment of funds to finance the agreement

1. New funds provided to finance the continuation of the business activity of the debtor in the context of the DRA will be paid as stated in the agreement.

2. In case of a subsequent insolvency of the debtor, the funds referred to in the previous paragraph will be classified as a claim against the estate, in accordance with article 35 of the Bankruptcy Law no110/2016.