

Legal News

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I. Law No. 05/L-083 on Bankruptcy

Law on Bankruptcy has been published in the Official Gazette of the Republic of Kosovo on 7th of July 2016, and entered into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo.

The law brings several novelties and ensures approximation with the EU Regulation No. 2015/848 of the European Parliament and Council of 20 May 2015 on Bankruptcy Proceedings. The law contains provisions for protection, liquidation and distribution of the assets of a bankrupt debtor to its creditors, and for the reorganization and discharge of debt for qualified business organizations.

As opposed to the old law, the new law applies to all forms of business organizations, including personal enterprises. In addition to laying down procedures for initiation of bankruptcy proceedings and the conduct of those proceedings, the scope of the new law has been broadened to include legal consequences of the opening and closing of a bankruptcy; reorganization of debtor in financial difficulties; and consequences of a discharge of a debt for the debtor upon the successful completion of reorganization and liquidation. The new law also provides for the Cross-Border Bankruptcy by taking into account the foreign business organizations and their branches in Kosovo.

The law lays down general principles in bankruptcy to be taken into account during the bankruptcy and reorganization proceedings by the court. In this regard, the law obliges the court to ensure, whenever this is possible, to preserve work places or create new workplaces in a reorganization proceeding. During the bankruptcy proceedings, the court is obliged to undertake all measures to ensure that the administrator of the assets in bankruptcy maximizes the general return of the assets in favor of creditors; that the distribution among creditors in the same category of priority rights will be made based on *pari passu* principle; and that the debtor, which is legal entity will not be the owner of his assets until the closure of the bankruptcy proceedings and will be deleted as an active business in the business registry with a note "bankrupt".

The law has introduced the bankruptcy of debtors as natural persons, not foreseen by the old law. In this regard, the individual debtor shall not be the owner of his assets used for business purposes administered during the bankruptcy proceedings. If the debtor and/or his close family members wish to register a new business, a note in the business registry that the debtor has bankrupted will be present for a period of five years from the day of closure of bankruptcy proceedings, and this fact will also be reflected in the credit registry of the Central Bank of Kosovo.

The law has been harmonized with the Law on Courts and the Law on Contentious Procedure, and contains a special article on jurisdiction of the court. According to this article, the Basic Court in Pristina, Department for Commercial Matters has a jurisdiction for bankruptcy related cases and all other matters that relate to this law. The law further foresees, that a sole judge will conduct the bankruptcy proceeding. Anyone

who has an interest and has been affected by the decision of the court has a right to appeal in the Court of Appeal of the Republic of Kosovo. The appeal will not suspend any procedural action ordered by the Basic Court, unless the Court of Appeal decides differently.

The Law contains a special chapter on the expedited proceedings and facilities for Small and Medium Enterprises (SMEs). SMEs are defined as any business organization with annual turnover up to 1 million Euro or having up to 25 employees. According to this chapter, when the debtor is SMEs, the case will be treated as reorganization, and the debtor must present the reorganization plan within 30 days. To this end, the law recognizes the notion of "monitor" who is appointed by the court when the debtor is a SMEs, and his role is to advise the debtor with regard to business, perspectives of business, and the reorganization plan which will be accepted/confirmed by all creditors. The SMEs debtor will be relieved in case of confirmation of the reorganization plan.

According to the new law, insolvency is not a prerequisite for the debtor to initiate voluntary bankruptcy proceedings, as it was the case with the old law.

The law contains provisions on unfulfilled contracts that are defined as contracts between the debtor and non-debtor(s) and non-fulfilment of which will result in breach of contract. The representative of the assets in bankruptcy accepts, rejects or transfers these contracts with the approval of the court. The law contains provision on when these contracts can or cannot be accepted, rejected or transferred.

After the entry into force of this Law, the Court shall implement its provisions for all the cases opened at the court before this Law and that are still under the procedure before the Court.

II. Law on the Prevention of Money Laundering and Combating Terrorist Financing

Law on the Prevention of Money Laundering and Combating Terrorist Financing has been published in the Official Gazette of the Republic of Kosovo on 15th of June 2016 and this law shall enter into force on the same date as its publication in the Official Gazette of the Republic of Kosovo.

The purpose of the abovementioned law is to clearly specify the measures, competent authorities and procedures for detecting and preventing money laundering and combating terrorism. This law follows the program of the Kosovo Government that foresees a proactive approach for international cooperation in prevention of money laundering. The new law aims at ensuring a better cooperation and interaction between police and prosecution in this regard.

The new law aimed approximation with the EU Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on prevention of the use of the financial system for money laundering and terrorist financing. The law further aims harmonization with the Financial Action Task Force recommendations adopted in 2012, and to address the Egmont Group criteria that promotes amongst other the development of FIU's and cooperation since Kosovo is aiming to become an Egmont Group member.

The provisions of this law foresee an autonomous budget for the FIU which will be independently decided upon by the latter in accordance to the Law on Public Financial Management and Accountability. It is additionally specified that the professional staff of the FIU are not civil servants and will be

subject to legislation governing civil service only if not specified otherwise by this law.

The law specifies that if the majority of the members of the Board that oversees the FIU determine that there are reasons to believe that the FIU is not complying to this law or other sub-legal acts applicable in Kosovo, the Board has the competence to refer this matter of non-compliance to the Auditor General of Kosovo and request an audit.

This law, in respect to the appointment of the Director of the FIU, supplements the criteria in this regard with the necessity of citizenship of the Republic of Kosovo.

The provision of the abrogated law which stated certified accountants, licensed auditors and tax advisors as reporting entities has been amended to "accountants, auditors and tax advisors" which is an indication of an expansion of the scope of reporting.

The law is expected to undergo additional changes in the months to come for better harmonization and further approximation with the abovementioned EU and international standards.

III. Law No. 05/L – 031 on General Administrative Procedure

Law on General Administrative Procedure has been published in the Official Gazette of the Republic of Kosovo on 21st of June 2016 and this law shall enter into force one (1) year after the publication.

This law aims to ensure the effective pursuance of public authority in the service of the public interest whilst guaranteeing the protection of the rights and legitimate interests of the persons.

This law shall apply whenever a public organ while exercising public authority:

- Decides on rights, obligations or legitimate interests of persons, or whenever the law explicitly calls for an administrative act;
- Concludes an administrative contract; or
- Exercises their competences through other administrative actions on relation to any persons' rights, obligations or legitimate interest.

A special law may provide special rules for certain aspects of specific administrative proceedings. Such Provisions must comply with general principles of this law, and cannot lower the level of protection of rights and legal interests of parties as granted by this Law. For the administrative proceedings pending on the date of entry into force of this Law, the previous legal provisions regulating the administrative proceedings shall apply.

Wherever in the legislation into force there is a reference to the Law No. 02/L-28 on Administrative Procedure or to its specific provisions, those references shall be considered to refer to this Law or to the respective provisions in accordance with this Law.

Upon entering into force, this Law shall abrogate the Law No. 02/L-28 on Administrative Procedure and any other provisions contrary to this law.

IV. Administrative Instruction No. 2016/01 On Licensing foreign Auditors and foreign Audit Firms

This administrative instruction has been approved by the Kosovo Council for Financial Reporting- KCFR on 28th of June 2016 and entered into force on the same date.

This administrative instruction determines the conditions that need to be fulfilled by foreign audit firms and foreign auditors to be recognized as Legal Auditors and to have the right to practice in Kosovo.

The new administrative instruction has a new Article named "Internal organization of foreign legal auditors and foreign legal audit firms". This article sets out the internal regulations and procedures that a Legal Audit Firm shall have. The Legal Audit Firm shall have internal regulations and procedure as per below:

- For preventing potential interventions that disable the independence of the legal Auditor,
- For preventing outsourcing of important functions of audit,
- Quality control for the audit services, etc.

Upon entrance into force, this Administrative instruction replaces the existing administrative instruction No.2012/01.

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