



**REPUBLIC OF ALBANIA
BANK OF ALBANIA
SUPERVISORY COUNCIL**

**DECISION
No. 51, dated 3.7.2019**

ON

**APPROVAL OF REGULATION “ON OUT-OF-COURT TREATMENT OF DISTRESSED
BORROWERS BY BANKS”**

Pursuant to Articles 12 (a) and 43 (c) of Law No. 8269, dated 23.12. 1997, “On the Bank of Albania”, as amended, and Article 57, paragraph 2, Article 58 paragraph 1 (c), Article 61, 66/1 of Law No. 9662, dated 18.12.2006, “On banks in the Republic of Albania”, as amended; having regard to the proposal from the Supervision Department, the Supervisory Council of the Bank of Albania,

DECIDED:

1. To adopt the Regulation “On out-of-court treatment of distressed borrowers by banks”, as provided in the text thereto.
2. The Supervision Department of the Bank of Albania shall monitor the implementation of this Decision.
3. The Governor's Office and the Research Department shall be responsible for the publication of this Decision in the Official Journal of the Republic of Albania and in the Official Bulletin of the Bank of Albania.
4. This Decision shall enter into force 15 days following its publication in the Official Journal and extends the effects until 01.01.2022¹.

SECRETARY

CHAIR

Elvis ÇIBUKU

Gent SEJKO

¹ Amended upon the circulating decision no. 34, dated 28.5.2020 of the Supervisory Council of the Bank of Albania.

CHAPTER I GENERAL PROVISIONS

Article 1 Scope

The scope of this Regulation shall be the specification of the method of cooperation among banks for the purpose of establishing the conditions for out-of-court treatment of their joint distressed borrowers.

Article 2 Purpose

The purpose of this Regulation is the reduction of non-performing loans and the control of loan portfolio quality, by encouraging the treatment of distressed borrowers through structured and efficient cooperation among banks.

Given that the loan portfolio comprises the key business of banks, and non-performing loans negatively affect their sustainability, they could potentially give rise to systemic risk, which in turn could undermine the financial stability and economic growth in Albania.

Article 3 Legal basis

This Regulation is adopted pursuant to:

- a) Article 12 (a) and Article 43 (c) of the Law No. 8269, dated 23.12.1997 “On the Bank of Albania”, as amended;
- b) Article 57, paragraph 2, Article 58 (c), Article 61, 66/1 of the Law No. 9662, dated 18.12.2006 “On Banks in the Republic of Albania”, as amended, which hereinafter shall be referred to as the “Law on Banks”.

Article 4 Subjects

This Regulation shall apply on banks licensed by the Bank of Albania to carry out financial and banking activities in the Republic of Albania.

Article 5 Definitions

1. The terms used in this Regulation have the same meaning as those defined under Article 4 of the Law No. 9662, dated 18.12.2006 “On banks in the Republic of Albania”, and Regulation No. 62, dated 14.09.2011 “On credit risk management by banks and branches of foreign banks”.
2. In addition to paragraph 1 of this Article, for the purpose of implementing this Regulation, the following terms shall have these meanings:

- a) “distressed borrower” - means an individual borrower or a group of related borrowers meeting at the same time the following conditions:
 - it is exposed to more than one bank, having a total exposure to all banks of more than ALL 250 million;
 - its debt to one or more banks has been in default for at least 90 days, or if one of the lending banks deems that the borrower is or could be distressed and that it needs a solution thereto;
 - its activity may continue, regardless its being in financial distress, and to that end there is a need for taking measures for recovering its repayment capability if the benefits from this process are larger than from the liquidation process, as per bankruptcy legislation;
- b) “moratorium on actions” - means a period of up to 90 days, starting from the signing of the agreement between banks and the distressed borrower (Annex 2), and during which period banks do not take the following actions:
 - i. exercise unilateral pressure on the borrower to pay their liabilities;
 - ii. make efforts to improve the position towards other creditor banks;
 - iii. take additional guarantees (collateral) from borrower’s assets;
 - iv. continue legal procedures started before the signature of the agreement as per Annex 2, except for those that are necessary to avoid loss of legal rights;
 - v. undertake new unilateral legal actions or proceedings;
- c) “creditor bank” - means any bank with outstanding credit toward a debtor, at the time of the signing of the interbank agreement on out-of-court treatment of distressed borrowers.
- d) “related borrowers” - has the same meaning as the term “related persons or group of persons” in article 4, paragraph 9.1 of the Law on banks.

CHAPTER II OUT-OF-COURT TREATMENT

Article 6 Measures for out-of-court treatment

1. In order to reduce non-performing loans and maintain loan portfolio quality, banks shall ensure out-of-court treatment of distressed borrowers, through the implementation of the actions provided for in paragraph 2 of this Article.
2. The measures for out-of-court treatment include at least one or more of the following options:
 - a) loan tenure extension;
 - b) additional financing, if it is necessary to increase working capital and/or to finance new investments;
 - c) liquidating secondary operations not directly related to the distressed borrower’s core business;
 - d) capital increase through financing;
 - e) introducing changes in the structure and method of business management;
 - f) selling distressed borrower’s movable or immovable property;
 - g) converting debt into equity;

- h) any other measure, favourable to a borrower's business continuity and strengthening its sustainability, while at the same time increasing the chances of recovery.

Article 7 Cooperation Agreement

1. Banks shall sign an agreement among them that shall specify the general cooperation conditions for out-of-court treatment of distressed borrowers, as specified in Annex 1 of this Regulation.
2. Such an agreement shall take into consideration the main loan restructuring principles, mainly Principles 3 and 4 of the Bank of Albania Guideline "*On business loans restructuring*".
3. The Bank of Albania shall assist in the signing of interbank cooperation agreement and shall monitor the process on an on-going basis.

Article 8 Principles of joint arrangements and decision-making

1. For the purposes of carrying out out-of-court treatment of distressed borrowers, banks, in addition to what is laid down in their interbank agreement, shall ensure:
 - a) establishment of common structures for the purpose of information exchange and assessment, and approval of the most appropriate measures for the distressed borrowers treatment, depending on the complexity of the relationship with them;
 - b) representation by administrators, who have been given the necessary authority by their (banks') governing bodies to negotiate and reach agreement on joint treatment;
 - c) discussion and agreement, respecting the principle of proportionality in relation to the exposure level, with the purpose of maintaining the position of each of them, while evaluating in a balanced manner the banks at a more favourable position;
 - d) maintaining confidentiality during the entire out-of-court treatment of distressed borrowers' process in order to protect debtors' business and encourage the solution.
2. Banks shall discuss the options offered to or by a distressed borrower to continue its business while honouring its obligations to them.
3. Banks shall apply out-of-court treatment measures in those cases where it is deemed and judged that a distressed borrower's financial position will significantly improve in the future and that the borrower will repay its loan.
4. Banks shall inform the Bank of Albania based on the above, which may attend as an observer the meetings to be held among them and shall inform it on the progress of the process on an on-going basis.

Article 9
External advisers

1. Third parties may be involved in out-of-court treatment of distressed borrowers, as external advisers on conducting financial analyses, on providing appropriate solutions, based on their experience, and on legal issues.
2. The selection of external advisers shall not be restricted by process costs.
3. Relations with external advisers shall be governed by preliminary agreements, which shall also include information confidentiality and conflict of interest clauses

Article 10
Agreement with the distressed borrower

1. Banks that decide to cooperate with the distressed borrower with the aim of out-of-court treatment of the borrower, sign the framework agreement specified in Annex 2 of this Regulation.
2. Banks may adapt the agreement to the needs of the specific case, while observing the obligation for a moratorium on actions.

Article 11
Restrictions

1. The Bank of Albania shall apply the restrictions laid down in paragraph 3 of this Article, to the banks that do not sign the cooperation agreement specified in Annex 1 or cause non-delivery of the agreements specified in Annexes 1 and 2 of this Regulation.
2. The Bank of Albania shall consider as cause of non-delivery by the banks, of the agreements specified in the Annexes of this Regulation, at least one or some of the following actions:
 - a) the bank does not exchange or share information on a distressed borrower, of which it has been made aware, with the rest of the banks;
 - b) the bank refuses to take part in discussions or cooperation with other banks without any justifiable reason;
 - c) the bank takes unilateral action on exposure to a distressed borrower during the moratorium period;
 - d) other reasons obstructing the common treatment of distressed borrowers;
3. The Bank of Albania shall, in the framework of supervisory review and evaluation process for capital adequacy, in accordance with the Guideline No. 26, dated 03.05.2017 “On the internal capital adequacy assessment process”, apply one or several supervisory restrictions as per Chapter VI of the Law No. 9662, dated 18.12.2006 “On the Banks in the Republic of Albania”, for the cases described in paragraphs 1 and 2 of this Article.

4. Where a debtor does not agree to a proposed restructuring agreement, creditor banks shall agree on immediate reclassification of the debtor to a category that is not higher than “substandard”.

Article 12
Other provisions

Banks shall ensure the applicability of the requirements of other regulations, during the period in which this Regulation is effective.

CHAIR OF THE SUPERVISORY COUNCIL

Gent SEJKO

ANNEX 1

INTERBANK COOPERATION AGREEMENT ON TREATMENT OF DISTRESSED BORROWERS

Whereas:

- increased bank capacity to credit the economy is closely related to their capacity to recover granted loans on time;
- banks would benefit from loan repayment and a reduction of the non performing loans' indicator;
- benefits from out-of-court treatment of distressed borrowers can be larger than from unnecessary liquidation of businesses, contributing to maintaining bank's long-term relations with its debtor clients;
- non-performing loans negatively affect bank financial position significantly,

It is hereby agreed:

I. PARTIES TO THE AGREEMENT

(BANKS NAMES)

to be referred to hereinafter as the Banks, are the parties to this agreement. By signing this agreement, the Banks will have been considered to have duly notified their parent banks, where applicable, of the commitment they are signing to.

II. PURPOSE OF THE AGREEMENT

The purpose of this agreement is the treatment of distressed borrowers so that they are able to repay their loans to banks. Through this agreement the parties seek fulfilment of obligations by borrowers within a reasonable period, by revising their relations with the borrowers, while ensuring their own going concern so that they continue their positive contribution to the economy.

III. SCOPE OF THE AGREEMENT

This agreement shall apply to distressed individual borrowers or groups of related borrowers of banks, as specified in the definition below, hereafter referred to as Debtor, who meets at the same time the following conditions:

- is exposed to more than one bank—**from now on referred to as Creditor Bank;**
- whose exposure to all creditor banks is more than ALL 250 million;
- whose debt to one or more creditor banks has been in default for at least 90 days, or if one of the creditor banks deems that the borrower is or could be distressed and that it needs a solution thereto;
- its activity may continue, regardless its issues, and to that end there is a need for taking measures for recovering its repayment capability, if the benefits from this process are larger than the liquidation process as per bankruptcy legislation.

IV. OBLIGATIONS OF THE PARTIES TO THE AGREEMENT

a. Communication between banks

Where a Creditor Bank deems that the conditions listed in **Section III** have been met, it shall inform the rest of the banks to which the debtor has exposure and which are parties to this agreement. The Creditor Banks with exposures to the borrower shall, within 10 business days, appoint one of them as the Leading Bank, which shall, in principle, be the bank with the largest exposure but without precluding another bank from being Leading Bank if the banks decide otherwise. The Leading Bank shall lead the negotiation process on preparing the resolution plan, which contains at least one or some of the measures defined in article 6 of the regulation “On out-of-court treatment of distressed borrowers by banks”.

The Bank of Albania shall be informed on all the communications provided for in section. The Bank of Albania shall, on the basis of the information that is available to it, inform the Creditor Banks about any potential exposure of the borrower they might not be aware of.

b. Communication with the Debtor

The Leading Bank shall, within five days from its appointment as such and with the authorization or in the presence of the Creditor Banks, contact the debtor in order to manifest their concern on the situation and demand prompt repayment of overdue obligations.

c. Negotiation of out-of-court treatment

Where prompt repayment does not occur and the debtor agrees to the initiation of discussions for an out-of-court treatment, the Creditor Banks shall jointly manage the process through the signing of a Debtor-Creditor Agreement.

The Creditor Banks shall notify the Bank of Albania within five business days of any Debtor-Creditor Agreement signed.

The out-of-court treatment of a borrower, depending on the borrower’s specific situation, may include:

- i. loan tenure extension;
- ii. additional financing if it is necessary, working capital increase and/or new investment financing;
- iii. liquidation of secondary operations, not directly related to the debtor’s core business;
- iv. capital increase through financing;
- v. introducing changes in the business management structure or method;
- vi. selling the debtor’s movable or immovable property;
- vii. converting debt into equity;
- viii. any other measure, favourable to the debtor’s business continuity and strengthening its sustainability, while at the same time increasing the chances of recovery.

Every debtor shall be treated taking into consideration its own specific situation. In that regard, the problems facing such debtors and the causes creating them shall be

identified, by requesting appropriate information from the debtor. The negotiations shall be held in good faith, in order to find the most appropriate solution.

The treatment of the debtor undertaken under this agreement shall be completed in accordance with all the applicable laws, regulations, procedures and principles in force.

d. Moratorium on actions

Throughout the duration of up to 90 days of the moratorium, the Creditor Banks shall be committed to applying the following rules:

- i. they do not exert any unilateral pressure on the debtor for the repayment of obligations;
- ii. they do not make any efforts for improving their position relative to the rest of Creditor Banks,
- iii. take no additional guarantees (collateral) from the assets of the borrower;
- iv. they do not continue any legal proceedings initiated before the signature of the agreement between banks and the distressed borrower, except for those which are necessary to avoid the loss of legal rights;
- v. they do not undertake any new unilateral legal actions or proceedings.

e. Confidentiality

All Creditor Banks participating in the restructuring negotiations shall maintain confidentiality throughout the entire process, in order to protect the debtor's business and to encourage the solution.

f. Majority

After having negotiated with the debtor, the Leading Bank shall propose an agreement which shall be voted by each bank individually. The agreement shall be approved by a majority requiring approval from the banks holding at least 65% of the debtor's total obligations and being more than 50% of all Creditor Banks. Where a binding agreement is reached, the Creditor Banks agree to sign the plan for out-of-court treatment of the debtor (the resolution plan).

V. NEGOTIATION TIMEFRAME

Given that time is important in debtors' treatment, the process described under Section IV of this agreement shall be undertaken and finalized in an expeditious manner. In the absence of extraordinary circumstances to be assessed jointly by the Creditor Banks in relation to a troubled debtor, preparation of the resolution plan, negotiations must be finalized within 90 days of the signing of Agreement between the borrower and the creditor banks.

VI. RIGHTS OF THE PARTIES IN CASE OF NON-PERFORMANCE OF RESOLUTION PLAN

In case the resolution plan fails to be finalized, the rights of the Creditor Banks to their individual contracts with the debtor shall be unaffected.

All banks shall, within 10 business days from the signing of the agreement, exchange officially the contact details of the employees assigned to fulfil the obligations deriving from this agreement.

In witness to their acceptance of all the terms of this agreement, the Banks' representatives affix their signatures below.

Date: / /

ANNEX 2
DEBTOR-CREDITOR BANKS AGREEMENT

This agreement is hereby concluded between:

_____ **Sh.p.k / SH.A (the Debtor)**, a company incorporated under
Law **[INSERT RELEVANT LAW]** residing at:

[INSERT THE NAME OF THE LEADING BANK].

Whereas:

The Company _____ meets the conditions for being considered as a distressed borrower as per the definition in Article 5 (a) of the Regulation “On out-of-court treatment of distressed borrowers by banks” (hereinafter referred to as the “Debtor”).

The Debtor has submitted an application for the preparation of an action plan on out-of-court treatment of distressed borrowers (hereinafter referred to as the “Resolution Plan”) in relation to the banks (insert all banks).

The banks have authorized bank _____ as their Leading Bank to represent them in this agreement (each bank’s authorization is attached hereto).

The Debtor recognizes its obligations to the banks (list the obligations to each bank), with an aggregate total amount of _____.

The banks express their will to cooperate for the execution of a resolution plan with the purpose of _____.

The Parties have agreed on the following:

1. Definitions

1.1. For the purpose of this Agreement:

1.1.1 “Resolution Plan” means the plan containing at least one or several of the measures listed in Article 6 of the Regulation “On out-of-court treatment of distressed borrowers by banks”;

1.1.2 “Creditor Bank” means any of the banks towards which the debtor has any loans at the moment of signing this agreement.

1.1.3 “Negotiation Period” means the period during which preparation of a resolution plan is negotiated, until the approval of the plan, which in any case is no longer than 90 days.

1.1.4 “Leading Bank” means the creditor bank that has been authorized by the creditor banks to lead the negotiations with the debtor, during the negotiation period and to check the implementation of the resolution plan.

2. Resolution plan

2.1. The Debtor shall, in cooperation with the Creditor Banks, develop a complete, transparent and feasible resolution plan, including an industry analysis and a reasonable cash flow projection within three weeks from the signing of this agreement.

2.2. The Debtor shall agree to provide the Banks or their authorized persons, expeditiously and unconditionally, all required information and documentation, as requested by the banks to assess the financial situation and a potential action plan.

The borrower agrees that this information and any other data or assessment of the banks is shared freely among them.

2.3. The Debtor may, in cooperation with the Leading Bank, appoint an advisor, including financial, technical or legal advisors, to prepare and develop a feasible plan at its cost and liability for payment of fees of such an advisor. Such costs shall be borne in the agreed manner among the parties.

2.4. The Debtor shall agree to co-operate fully with such advisor and provide him all required information in time and efficiently.

3. Creditor Banks' obligations (Moratorium on actions)

The Creditor Banks shall agree that, for a period up to 90 days from the signing of this agreement, they will respect the following restrictions:

- a) they shall not exert any unilateral pressure on the debtor for the repayment of obligations;
- b) they shall not make any efforts for improving their position relative to the rest of Creditor Banks;
- c) they shall not receive any additional guarantees (collateral) from the debtor's assets;
- d) they shall not continue any legal proceedings initiated before the signing of this agreement, except for those which are necessary to avoid the loss of legal rights;
- e) they shall not undertake any new unilateral legal actions or proceedings.

4. Debtor's obligations

4.1. During the period the resolution plan is under review, preparation or implementation, the Debtor shall not, without the prior consent of the Creditor Banks, take any of the following actions:

- a) create or assume additional indebtedness;
- b) make any investments or incur any expenses or divert the funds except in the ordinary course of its business;
- c) transfer funds for purposes other than its own business, even as an individual;
- d) transfer, alienate or dispose of any movable or immovable property outside the ordinary course of its business;
- e) guarantee any other natural or legal person's obligations;
- f) influence material changes in its management structure or governing body composition;
- g) influence any change in its capital structure including the shareholding composition and holdings;
- h) suffer or initiate any proceedings for the liquidation or reorganization of its business;
- i) create any additional charge, mortgage or any other guarantee (collateral) in respect of its properties and other assets (including any balance in bank accounts or receivables);
- j) make any preferential payments, including any debt repayments to creditors;

- k) enter into any foreign exchange, swap, or derivative transactions except in the ordinary course of its business to cover existing commercial exposures;
 - l) engage in any activity, directly or indirectly, other than its existing business activities;
 - m) make any payments to shareholders, whether in the form of dividends, redemption of equity, repayment of subordinated debts or otherwise;
 - n) amend or modify the company's statute;
 - o) commence or proceed with any legal action or proceeding against the Creditor Banks during the Negotiation Period.
- 4.2. The Debtor shall execute the restrictions as may be required by the Creditor Banks during period of the actions specified in the resolution plan.
- 4.3. The Debtor shall agree and undertake to pay fees for preparation and finalization of legal documents to the Creditor Banks. Further, the Debtor shall agree and undertake that it shall pay various fees, such as Leading Bank fees, fees for documentation etc. as per the agreed resolution plan. The Debtor shall also pay the advisory fees/commissions. The fees described above may be shared with Creditor Banks, if so agreed.
- 4.4. The Debtor shall acknowledge that, if the resolution plan obligations are not fulfilled, the Creditor Banks have the right to terminate this agreement and the relationship between the Debtor and the Creditor Banks shall continue to be governed by the respective contracts.

5. Protection of actions taken in good faith

- 5.1. The Debtor shall agree and undertake to indemnify and hold harmless the Creditor Banks against all losses, costs, damages, liabilities, claims, actions, fines, fees, other expenses (including lawyers' fees and court costs), which the Creditor Banks may suffer as a result of this Debtor-Creditor Agreement, and/or the undertakings and representations set out herein and/or the non-implementation of the approved resolution plan by the Debtor.

6. Obligation to notify

- 6.1. The Leading Bank or any bank shall inform the Bank of Albania if one or several Creditor Banks fail to fulfil the obligations under this Agreement, and also give the respective reasons, and notify the Creditor Banks of this information.

7. Dispute resolution

- 7.1. If any dispute arises between the Debtor and the Creditor Banks under this Agreement, such a dispute shall be resolved amicably.
- 7.2. In case the dispute is not resolved amicably, at least one of the parties shall formally notify the other party, 15 (fifteen) days in advance, on the termination of this agreement. After the 15 (fifteen) days have passed from the notification, this agreement shall be deemed terminated, and the relationship between the Debtor and the Creditor Banks shall continue to be governed by the respective contracts.

8. Engagement of the parties

- 8.1. The parties to this agreement shall agree to abide by the terms of this agreement and the terms stipulated in the resolution plan.

Leading Bank:

Represented by:

The Debtor:

Sh.p.k. / Sh.a.

Represented by:

Debtor Managing Director / Representative

Date: /
/