GUIDELINE

ON CORPORATE LOAN RESTRUCTURING

BANK OF ALBANIA

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1. INTRODUCTION

1.1. Definitions

a) "*Loan restructuring*" shall mean the facility/-ies the bank applies to the borrower/-s due to their financial difficulties arising from economic or legal reasons, which are not carried out by the bank in any other case and in general include:
   i) facilities concerning the credit terms and conditions by amending one or more contract terms (including the change of product and interest capitalisation), which mainly relate to the term, principal and interest rate;
   ii) Execution (use) of collateral or other assets for partial credit payment;
   iii) Replacement of the original borrower or the inclusion of an additional borrower.

b) "*Borrower*" (debtors and/or co-debtors) shall mean the natural or legal persons, who have received a business loan for their business activity.
c) *"Creditor"* shall mean banks and financial institutions licensed by the Bank of Albania to grant loans.
d) *"Moratorium"* shall mean the temporary suspension of legal actions against the other party.

1.2. Overview

Comment: Financial difficulty shall mean borrower's failure to timely observe the obligations under the contract with the creditor, but that the latter considers that, through the loan restructuring process, the borrower will be able to fulfil his obligations under the new terms and conditions.

The corporate borrower experiencing financial difficulties (hereinafter referred to as the Borrower) and the creditor (financial institutions) have the option to enter into an agreement, where the parties mutually agree on loan restructuring, under which both parties come to an agreement to restructure the repayment terms of the loan, in a way that allows the borrower to continue doing business and, at the same time, fulfil the obligations towards the creditor.

As a legal principle, loan restructuring occurs when the companies face financial difficulties. Recently, there has been an increasing tendency of the collection of loan repayments of borrowing companies experiencing financial difficulties outside of formal insolvency proceedings through timely loan restructuring of cooperative borrowers.

1.3. Benefits of Loan Restructuring

It is generally agreed that loan restructuring:

- provides companies that are experiencing financial difficulties with the option to continue operating and to successfully overcome the difficult times;
- provides an opportunity for financial institutions and other creditors to reduce losses;
- provides the opportunity to avoid negative social and economic effects, which may arise as a result of companies becoming insolvent;
- avoids the court procedures, which may take time until their finalisation, and enhances the efficiency of loan recovery;
- is beneficial to other interested parties (clients, employees, suppliers, and investors), because the companies involved in the loan restructuring may continue to conduct business;
- helps businesses build trust towards creditors, particularly when the process is equitable and transparent.

2. OBJECTIVES AND SCOPE

This document seeks to provide the borrowing companies, creditors and relevant government institutions information on the principles and guidelines concerning the loan restructuring process. The principles and guidelines are based on examples of the international best practices.

The objective of the following principles is to establish orientations concerning the loan restructuring process, in order to allow the borrowers facing financial difficulties to fulfil the contractual obligations, in order to ensure a normal conduct of their business operations, and prevent as much as possible the execution of the collateral, which usually involves a long and costly procedure for both parties.

These principles do not affect the obligatory effects of the legal standards or their enforcement. Each creditor has its own restructuring policy, based on the characteristics of the business loan portfolio and strategy. It is worth noting that loan restructuring is a right not an obligation, for the creditor, and an option not an obligation, for the borrower. This is usually deemed as an adequate solution in case borrowers face financial difficulties.

The following principles shall apply only to borrowers who are part of business loan agreement and face financial difficulty, failing to fulfil the obligations under the business loan agreement.

It is necessary for the creditors to carefully evaluate the need for cooperation with the borrower facing financial difficulty, and to implement the following principles during the loan restructuring process.

In general, this document serves as a tool for open communication between the borrower and the creditor, with special focus on the borrower, who wishes to improve the financial relationship with the creditor, showing at the same time full commitment to repay its debts. As such, the document is intended to educate and provide guidance as to the restructuring process. While for creditor, it will serve as a guide for the entire process.

The document is formulated in the form of principles to be followed by both parties entering into a loan restructuring agreement.

Furthermore, these principles are intended to be applied for the restructuring process as well as for the entire period of relationship between the parties. They consider all possible relationship combinations, such as one creditor and one or more borrowers, one borrower and one or more creditors, or the combination of the two.

3. PRINCIPLES AND COMMENTARY

Principle 1 Debt Restructuring is a concession, not a right

All borrowers are obligated to repay their loans under the terms and conditions of the loan agreement signed with the creditor. Loan restructuring represents a concession to the borrower and should be initiated only if the borrower's financial problems are temporary in nature and can be solved so that the business can continue its operations and meet its financial obligations under the new loan agreement with the bank.

Comment:

All borrowers are obligated to repay their loans in accordance with the terms and conditions under the contract. Borrowers should therefore turn to their creditors and begin addressing problems in a timely manner when they first become apparent rather than waiting until a payment default occurs.

Loan restructuring is a way for a company experiencing financial difficulties to solve problems without resorting to bankruptcy proceedings and legal process. Loan restructuring should, however, only be entered into when there are conditions that allow the creditor to offer a solution to the financial problems that enable the business to fulfil its financial obligations and remain operational in the long term. If these conditions do not exist, then the creditor(s) should continue with collateral execution, which may lead to the company bankruptcy.

One of the basic principles of loan restructuring is the principle of volitional action. This principle describes the freedom of establishing legal relationships in its operation and implementation, as well as the selection of persons they will enter into a legal relationship with. The parties may enter into any transaction, and it is critical that all parties take part in the negotiations in order to come to a proper solution.

Restructuring the borrower's obligations cannot be seen as a right. Similarly, creditors cannot perceive that they have the right to demand the borrowers to enter into restructuring negotiations. The parties' rights arise from the contract. They include the creditor's right to submit a court claim against the borrower for failure to fulfil its obligations, and pursue collateral execution left as guarantee. Also, among the rights of the parties is the right of the creditor to begin insolvency proceedings in the court.

In relation to this principle, it must be noted that the creditor must observe the principles of justice, which presume the protection of parties' rights and lawful interests. In order to ensure that the rights of

the parties are protected, the parties should begin negotiations in good faith so as to give the borrower the ability to continue to run the business and, at the same time, fulfil its obligations to its creditors.

It is important to emphasize that the initial negotiations for loan restructuring are the choice of the parties - the borrower and the creditor(s).

Considering this fact, if the borrower initiates a request for loan restructuring, the creditor still has the right to demand the actual obligations under the contract to be fulfilled.

Principle 2 Good Faith

Negotiations between the borrower and the creditors must take place in good faith in order to reach a proper and sustainable solution.

Comment:

It is crucial that negotiations between the borrower and relevant creditors take place in good faith and that they are fair and transparent. The parties' rights and obligations shall be used and performed in good faith, taking into account the other party's interests. The goal of the principle of good faith is to build trust and honesty between the borrower and relevant creditors in the loan restructuring process.

It is likewise important to underline that loan restructuring is possible only if the borrower and creditors work together to achieve the same goal – for the benefit of both parties in the long term. If any of the parties loses the trust of the other party, then the loan restructuring will probably not be successful. In this way, creditors will utilise the rights granted to them by the law and initiate legal action for breach of contractual obligations.

Principle 3 Coordinated Approach

In cases involving more than one creditor, the interests of the relevant creditors are best served by taking a coordinated approach to solving the issues. Creditors may facilitate coordination of the issues by setting up a committee to coordinate the work between them. Depending on the size of debt and the complexity of issues, the most important creditors may choose to appoint professional advisers to advise and assist the committee and the important creditors.

Comment:

This principle shall be applied when a borrower has contractual obligations to more than one creditor. This can make it difficult to agree on a solution in the absence of a coordinated approach when dealing with the borrower. As soon as they have agreed upon the loan restructuring (see Principle 5), borrowers have the ability to enter into negotiations with each creditor, who usually try to ensure that the borrowers are being treated equally by the other creditors as well.

Successful loan restructuring is possible if the creditors work together to achieve their common interests. In order to create a unified approach and ensure more effective communication, in the case of the loan restructuring, creditors may set up a coordinating group to conduct negotiations, assess the proposals and reach an agreement with the borrower for a final solution.

Setting up a coordinating group depends on a number of factors, including the size of the creditor, the number of creditors, their interests, etc. The agreement on setting up a coordinating group is the choice of the creditors, who may establish the method by which to select the members and the decision-making.

Either the coordinating group or the relevant creditors may select one of their members to act as the main coordinator, who will normally chair the meetings of the coordinating group and be responsible for administering the restructuring process. Co-coordinators do not represent the relevant creditors in the sense of having the authority to commit them to any particular course of action. They rather facilitate the negotiation process and the dissemination of information to all relevant creditors. They also help resolve disputes or disagreements by facilitating discussions amongst the relevant creditors.

The coordinating committee enables the borrower to obtain an indication of the likely reaction of the relevant creditors to developments and proposals that the borrower may be considering. It is important, however, that coordinators ensure that the information they receive is disclosed to all relevant creditors. In principle, they do not have liability or responsibility to other relevant creditors, either expressly or by any course of conduct.

All parties should bear in mind that the role of the coordinator and the coordinating group is to facilitate the process, not to make decisions on behalf of the creditors. The creditors must make their own independent assessment and decision regarding any information, advice or proposals they receive either directly or via coordinators, taking into account their share in the loan granted and without infringing the interests of other relevant creditors.

If deemed appropriate, the relevant creditors shall discuss and approve the engagement of professional advisers, such as lawyers, accountants and evaluators. Such advisers should have the relevant experience and skills to provide impartial advice for the collective benefit of all relevant creditors.

Principle 4 Negotiation with the Borrower

The relevant creditors usually appoint one person (with experience in negotiating loan restructuring), who will conduct negotiations with the borrower, and will ensure that the relevant creditors receive the information provided by the borrower.

Comment:
In order to enhance the effectiveness of the loan restructuring process and encourage a positive result, it is necessary to authorise one representative of the relevant creditors (part of the coordinating group or not), who can manage the negotiation process, coordinate all information with the relevant creditors, and help resolve any disputes among the creditors regarding issues that affect their interests. This will enable the effective coordination of the creditors' position and protection of their interests. Creditors may agree on selecting more than one coordinator who can represent their interests in negotiations with the borrower. In any case, the number of coordinators shall not be more than three.

The coordinators usually do not define the direction the creditors will take, but they do anything to facilitate the negotiation process and ensure that all coordination group members receive the necessary information.

If negotiations come to a standstill, the creditors may choose to conduct individual negotiations with the borrower. If this is the case, it would be useful for creditors to exchange information between them on the negotiation process and the achieved results, in order to maintain transparency in mutual relationships. Without limiting to the following solutions, the restructuring process may take into consideration one or more of the following:

a) Extending the loan tenor;
b) Changing the loan interest;
c) Changing the loan instalment;
d) Changing the instalment repayment frequency;
e) Capitalising the interest and/or arrears;
f) Allowing a grace period for the principal or interest;
g) Changing the loan product;
h) Rifinancing the borrower;
i) Taking additional collateral or changing the present collateral with a higher value one;
j) Transferring the loan to another borrower.

Principle 5 Moratorium Period

A moratorium period of usually not more than six months is set during the loan restructuring process, during which the parties engage in negotiations to find the form of loan restructuring. This period serves the parties to exchange necessary information and assess the options provided by the parties for finding an acceptable solution. Creditors may choose to grant facilities to the borrower for the fulfilment of its obligations during this period. Granting a moratorium period, however, is not a right of the borrower, but a concession granted by the creditors, who bear the costs during this period. The borrower's obligations continue to be accrued even during the moratorium period.

Comment:

The length of the moratorium period is determined by agreement between the borrower and the relevant creditors. Typically, the moratorium period begins on the date that the borrower agrees to enter into restructuring negotiations, and is initially not more than six months, but in any case it can vary depending on the size of the loan, complexity, information that needs to be collected, and the time necessary to evaluate the proposals.

The relevant creditor(s) agreement to enter into restructuring negotiations should be contained in a letter agreement between the borrower and relevant creditor(s) in which:

- the borrower acknowledges that it is in default and agrees to the legal amount of loan outstanding, including interest, penalties, and other fees;
- the moratorium period is clearly set forth;
- both the borrower and relevant creditor(s) may agree to consider a restructuring under the terms of these principles;
- the relevant creditors agree to refrain from taking legal action to enforce their claim, and the borrower agrees to provide complete information in support of its request to restructure the loan.

Principle 6 Finding New Resources

Although it is not common banking practice to increase borrower's exposure in case it fails to fulfil the loan repayment obligations on a regular basis, during the restructuring process, the creditors may decide to support the borrower with new financial resources, in order to ensure that it continues to conduct business operations and meet the financial obligations, by receiving the necessary guarantees.

Comment:
Although it may not be considered as the best possible option, supporting the borrower with additional financial funds remains an important rule in loan restructuring.

During the moratorium or the loan restructuring period, the borrower may require additional financial resources. The borrower must explain the need for funds, and the way they will be used and repaid.

It is recognised that a basic principle of loan restructuring is to reduce and not to increase a creditor's exposure to a troubled borrower. However, taking into account the need to rebuild economic activity, through the rehabilitation and not through liquidation of otherwise viable companies, as well as the fact that the restructuring process is optional, the creditors may consider financing the borrower by receiving the necessary guarantees. The borrower should be prepared to recognise the additional obligation by providing additional guarantees or collateral if required by the creditors. The borrower must also take into account that if it has no assets that can be used as collateral for additional funds, there is a risk that creditors will not extend additional loans.

Principle 7 Actions during the Moratorium Period

Case by case, the creditors commit to reconsider whether to continue the court or execution procedures against the borrower or not, and/or whether to change their claims or not during the moratorium period. In any case, the position of creditors should be set out in the negotiation agreement.

Comment:
This principle stems from the basic premise of these guidelines, which is the cornerstone of the loan restructuring process, that the process is a mutually agreed upon contractual relationship. Therefore, this principle can only be implemented if both parties agree on it. As stated above, during the moratorium period, the relevant creditors may agree not to take legal action to enforce their repayment claims in order to give the borrower an opportunity to draft a restructuring plan. The basis for the restructuring plan is the willingness of the creditor to help the borrower, to gain a benefit in the long term.

Taking this into account, if the creditors believe it is beneficial for the borrower to continue doing business, they may create the conditions necessary for the normal functioning of the borrower's business during the moratorium period. When entering into this type of agreement, the relevant creditors may agree:

- to facilitate the loan repayment during the moratorium period;
- not to initiate insolvency proceedings against the borrower during the moratorium period;

- not to attempt to improve their position in relation to other creditors by gaining or demanding new security or requesting privileges during the moratorium period; and
- to allow the borrower to use existing credit and services.

The borrower must consider that when entering into an agreement on the moratorium period, it must also make certain promises in accordance with Principles 8 and 9.

Principle 8 Borrower's Pledge to the Creditors during the Moratorium Period

During the moratorium period, the borrower promises not to take any actions that may negatively affect the loan repayment to the relevant creditors (to all or either of them individually). This must be provided for in the agreement for the conduct of negotiations.

Comment:

This principle, along with the previous principle, stems from the basic premise of the guidelines, which states that the restructuring is mutually agreed upon contractual relationship. If an agreement between the parties is the basis for a moratorium period, then actions taken by the borrower that may cause losses to the creditor may be the basis for terminating the agreement and calling due the loan. It is crucial that during the moratorium period, the borrower does not take any action that will place one or more creditors in a worse position than they were prior to the moratorium period. Also, the borrower must not grant priority to one creditor in relation to the others.

Principle 9 Borrower's Complete Transparency during the Moratorium Period and New Contractual Relationships

The borrower shall, at any time, provide the relevant creditors and their representatives all the necessary information regarding the financial situation and forecasts.

Comment:

If the basis of the moratorium period is the mutual agreement between the borrower and the relevant creditor(s), and if the borrower is not transparent in the relationships with the relevant creditor(s), it may be basis for the creditors to terminate the agreement and calling due the loan.

During the loan restructuring period, the creditors may set strict transparency requirements for the borrower. On the other hand, the borrower must be prepared to provide the relevant creditors all information regarding the company’s financial statements and prospects for the future, which the

creditor(s) needs to evaluate the borrower's position. This requirement must be accepted by the borrower in order for the creditors to agree to enter into an agreement regarding the moratorium period.

The principle of good faith (Principle 2) also applies to the borrower's transparency.

Principle 10 Confidentiality of information

If the information is limited to the public, the creditors must ensure the confidentiality of information on the borrower's financial situation, prospects for the future *and proposals for solving the problems that are made available to the relevant creditors.*

Comment:
During the loan restructuring process, the relevant creditors will receive necessary information regarding the borrower's financial situation and prospects for the future. In the meantime, the borrower should provide the creditors all the necessary information.

The borrower should therefore have assurance that the provided information will be viewed as completely confidential, by requiring the application of special rules that ensure *the* confidentiality of the borrower's information.

Principle 11 Designing the Loan Restructuring Plan

Designing an adequate loan restructuring plan is the most important outcome of negotiations between the relevant creditors and the borrower. To achieve this, it is very important that the parties exchange information and proposals for finding an acceptable solution to the loan repayment.

Comment:
The borrower may submit proposals for the loan restructuring, which should be based on a business plan and include information concerning the necessary steps that need to be taken to solve the borrower's financial problems. The business plan must be based on sound and feasible forecasts, which indicate the borrower's ability to increase cash flow to the point that is necessary to execute the loan restructuring plan (and not simply delay the insolvency process).

The purpose of the moratorium period is to provide the borrower the opportunity to design a loan restructuring plan. The plan must prove that the company will be profitable, and it must specify the

amount that the borrower will be able to repay each of the relevant creditors. On the other hand, the relevant creditors can assist the borrower in designing the loan restructuring plan.

It is impossible to create a standard model for the loan restructuring because, as mentioned above, the restructuring is based on the free will of the parties. Taking this into account, the plan may contain the creditor and borrower's choice of Civil Code concepts for entering into a contract, as well as amending or cancelling it. However, it should be noted that creditors will likely not support a plan which:

- does not contain a forecast of gains/losses of the business on a monthly and/or quarterly and/or annual basis (for example, for the next five years);
- does not contain a forecast of cash flow, including payments to creditors (for example, for the next three years);
- does not contain sources from which the turnover capital will be received, as well as how to finance possible improvements in financial efficiency;
- does not identify how the proposed changes (for example, loan repayment extension, or establishment of the grace period) will affect the relevant creditors' rights;
- does not mention the most important changes in the borrower's business within the time period;
- does not identify the assumptions on which the forecasts are based.

If the borrower is unable to convince the relevant creditors that it will be able to resolve its financial problems within the medium-term period, then the creditors will most likely not consent to a loan restructuring.

Principle 12 Settlement Proposals Correspond to the Parties' Rights

When making proposals for solving the borrower's financial difficulties, the parties must take into account the rights of each relevant creditor and the amount of outstanding obligations at the beginning date of the moratorium period, without excluding any other obligations that may be borne at a later time.

Comment:
During the time between the beginning date of the moratorium period and the agreement on the loan restructuring plan, the relevant creditors must agree that their relationship to one another shall not change. Also, the borrower cannot assume that relevant creditors who have more collateral will agree to a restructuring proposal if their position declines in relation to creditors without sufficient collateral.