MARAVELA | ASOCIAȚII

EMERGENCY LEGAL KIT FOR BUSINESS SERIES

Year 3, Issue 1, February 2015

Insolvency in Romania

In 2014, Romania adopted a new insolvency law, which brings together under one piece of legislation all the procedures applicable to companies, groups of companies, credit institutions, insurance and reinsurance companies, as well as insolvency prevention and cross-border insolvency proceedings. Despite repeated legislative attempts, to date Romania does not have a legal framework for the insolvency of natural persons.

The new insolvency framework is in line with modern standards and it is, for the most part, adapted to the economic realities of the country. It is however still too early to predict its effects on the day-to-day activity of businesses facing insolvency as creditors or debtors, as this will largely depend on the way the new framework will be applied by the courts of law.

1. General aspects

The main principles of the Romanian insolvency are an integrated vision illustrating a new approach for saving business and giving a second chance to debtors, while ensuring a fair treatment of the creditors and improving the recovery rate of the receivables.

The new insolvency framework provides for new concepts and rules as compared to previous regulations, *e.g.*:

- a basis for coordinating insolvency proceedings for groups of companies;
- creditors' and debtor's possibility to file for interim measures to safeguard the debtor's assets before the application to open insolvency proceedings is heard;
- the private investor test;
- conditioning debtor insolvency requests on the outstanding debt threshold required for ommencement of insolvency, which had formerly applied only to creditors.

The new insolvency framework also brought novelties regarding the treatment of financial leasing agreements in insolvency proceedings[1].

Considering the economic background which favoured its adoption, the new insolvency frameworks aims to offer protection against abusive insolvency requests and to speed up the insolvency proceedings against debtors facing insuperable financial difficulties.

The following insolvency procedures are thus currently regulated by the Romanian insolvency law:

- pre-insolvency proceedings, comprising the ad-hoc mandate procedure and the concordat preventif, and
- insolvency proceedings, which can take the form of either a judicial reorganization or of bankruptcy.

2. Pre-insolvency proceedings

2.1 Ad-hoc mandate

The ad-hoc mandate procedure is opened at the debtor's request based on which an ad-hoc principal designated by the court negotiates with the creditors various settlements to be concluded with the debtor, in order to help the latter avoid the commencement of insolvency. This is the least energetic procedure, as its commencement does not have

[1] For details see Maravela & Asociații ELKB series, Year 2, Issue 2, September 2014, *Financial leasing & new insolvency law*. Most notably, leasing companies may choose, within the first 3 months as of commencement of insolvency procedure, to either terminate or maintain financial leasing agreements concluded with the debtor. If a leasing company terminates a financial leasing agreement, due to commencement of insolvency proceedings, it can either reposes the assets or it can choose to transfer ownership over the same to the debtor.

any major effects on the debtor other than creating an organized and transparent framework to discuss debt restructuring.

2.2 Concordat preventif

The concordat preventif, which is encountered more and more frequently in Romania, is a more energetic procedure since on the one hand forced execution can be suspended for as much as several months while the agreement with the creditors is negotiated, and on the other hand, no insolvency proceedings may be commenced against the debtor during the concordat preventif.

The concordat preventif consists of an agreement with the creditors whereby the debtor proposes a business recovery plan comprising also a payment scheme of the creditors' receivables. By signing such agreement, the creditors confirm their support in helping the debtor to overcome the financial difficulties encountered.

The procedure is managed by a special receiver and by the syndic judge and it entails the following main steps:

- within 30 days as of the commencement of the procedure, the special receiver shall draw up an offer to the creditors (including a project regarding the payment of the claims);
- the offer must be approved by the creditors within 60 days from the date when they receive it;
- after 75 per cent of the creditors approve the offer (if they approve it), the concordat preventif is subject to the approval of the syndic judge;
- as of the concordat preventif is confirmed by the syndic judge, all the individual claims of the creditors that have approved the preliminary insolvency shall be suspended;
- at the debtor's request, the syndic judge shall suspend all procedures of enforcement initiated by the signing creditors who approved to take part in the procedure; for creditors who did not approve to take part in the procedure, forced executions may be suspended after guarantees are established in their favour;
- the duration of the concordat preventif is of 24 months, with possibility of extension for another 12 months;
- the concordat preventif can be completed successfully, or it can fail, if the debtor does not comply with the project for the concordat preventif.

3. Insolvency

3.1 Commencement

Insolvency may commence at the request of the debtor or at the request of the creditors.

The debtor itself is compelled to submit a request for the commencement of insolvency within 30 days as of the date the state of insolvency has occurred.

The creditor whishing to commence insolvency proceeding against its debtor must hold a receivable exceeding RON 40,000 (roughly EUR 9,000) that has been outstanding for more than 60 days.

Upon commencement of insolvency, all judicial or extrajudicial legal actions and forced execution measures for recovery claims against the debtor or its goods will be stayed by virtue of law. Also, no accessories shall be added to such claims.

3.2 Insolvency bodies

The official bodies implementing the insolvency proceedings are the court, the syndic judge, the general meeting of creditors, the special administrator and the judicial administrator/liquidator. The syndic judge has mainly coordination tasks, while the administrator/liquidator have mainly executive duties.

The insolvency proceeding is monitored by creditors trough the general assembly of creditors, which is convened and chaired by the judicial administrator or liquidator. The general meeting of creditors may also be convened at the request of the creditor's committee or at the request of creditors holding at least 30% of the total value of receivables. The general meeting of creditors may appoint during their first meeting a creditors' committee formed of 3 or 5 creditors of the first 20 creditors based on the amount of the debts.

3.3 Observation period

The first stage following the commencement of insolvency is the observation period, aimed at assessing whether the debtor's business is still viable and should be reorganized. The observation period is expressly limited to 12 months.

Thereafter, insolvency may result in either reorganisation procedures or bankruptcy. The judicial reorganization aims to rescue the debtor, while the bankruptcy aims to liquidate the debtor's assets and to pay all outstanding amounts.

3.4 Reorganisation

The judicial reorganization procedure requires the drafting, approval and implementation of a reorganization plan aimed at the debtor successfully redressing its

activity and succeeding to perform the payment of its debts, in accordance with an agreed payment schedule.

The reorganization plan might provide for the financial or operational restructuring of the debtor's activity, the corporate restructuring by modifying the share capital structure, restructuring the debtor's activity by selling several assets, as well as any other means the insolvency practitioner may deem fit depending on the specificity of each insolvency case.

The reorganization plan is subject to the approval of the general meeting of creditors.

During the reorganization period, the debtor is represented by a special administrator, appointed by the general meeting of shareholders.

If the debtor complies with the reorganization plan, its activity shall be continued, otherwise the syndic judge may approve the commencement of bankruptcy proceedings.

3.5 Bankruptcy

In case the financial situation of the debtor does not allow reorganization or the reorganisation fails, the debtors will undergo bankruptcy. The purpose of bankruptcy is to convert the debtor's assets in money, for the repayment of creditors' receivables.

During the bankruptcy, the debtor is duly represented only by the judicial liquidator. The main attributions of the judicial liquidator are the following:

- to manage debtor's activity exclusively for the purposes of the liquidation;
- to file actions for declaring void any fraudulent acts concluded by the debtor and prejudicing the creditors' rights;
- to sell the debtor’s assets;
- to perform the payment of the creditors' receivables.

Upon finalization of all bankruptcy related proceedings, the debtor ceases its existence and is deregistered from the relevant trade registry.

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