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Bankruptcy, Insolvency & Rehabilitation Proceedings in Romania

ILN RESTRUCTURING & INSOLVENCY GROUP



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KEY FACTS OF BANKRUPTCY, INSOLVENCY & REHABILITATION PROCEEDINGS UNDER ROMANIAN LAW

1. A brief presentation of the bankruptcy/insolvency/rehabilitation proceedings of the country and their main differences.

Romanian legislation provides two main categories of such procedures:

I. Insolvency prevention procedures

I.1. Restructuring agreement

A debtor who faces financial difficulties may propose a restructuring agreement, which can be drawn up either by the restructuring administrator or by the debtor, with the assistance of the restructuring administrator. Among others, the restructuring agreement must contain an analysis on the economic situation of the debtor, a list of the claims which will be and not be affected by the reorganization agreement and the proposed restructuring measures which can be either operational, financial or human resources oriented. The agreement will eventually be voted upon by the affected creditor(s), based on the categories in which they fall. The purpose of the restructuring agreement is for the debtor to restructure its activity and to reach an agreement with its creditor(s) regarding the payment of the due debts.

I.2. Preventive agreement

If the debtor faces financial difficulties, it can request the court to open the preventive agreement procedure. The court appoints an administrator contracted by the debtor, who drafts the restructuring plan or assists the debtor in drafting it. The restructuring plan shall include a reorganization plan for the debtor. If the creditors approve the project, the debtor's activity shall be carried on in

accordance with such project, for a period of a maximum of 48 months, with the possibility of extending it for another 12 months. During the first year of the implementation of the restructuring plan, the debtor must reimburse a minimum of 10% of the claims affected by the preventive agreement.

II. Insolvency procedure

The insolvency procedure may be requested either by the debtor or by any creditor, if debts in the amount of a minimum of RON 50,000 (approximately EUR 10,000) are due for more than 60 days.

If the court approves the request, depending on the debtor's situation, the procedure may be started in one of the following forms:

II.1. General procedure

In such case, the debtor enters an observation period, in which the official receiver analyses if there are any chances for the company to be reorganized. Following this first step, the debtor may enter one of the following procedures:

- (i) Reorganization, in which the debtor's activity is reorganized in accordance with a reorganization plan, approved by the creditors. The plan may provide various measures, such as reducing the debt or rescheduling one or more due debts. The execution on the plan is limited to a period of 3 years, with the possibility of extending it. If the debtor is a legal entity, the execution of the plan is limited to a period of 4 years, instead of 3, with the possibility of extending it, if the initial period of execution

was less than 4 years. If the plan is successful, the debtor shall be reintegrated in the commercial circuit, and all debt reductions shall remain final. If the plan fails, the debtor enters the bankruptcy procedure (presented in point (ii) below), in which case the reduction of the debts is no longer valid, the creditors being entitled to recover their entire debt.

- (ii) **Bankruptcy**, in which the debtor's assets are sold and all money obtained is distributed to creditors, in accordance with their priority rank, as indicated in the creditors' list (e.g., secured creditors shall recover before unsecured ones).

II.2. Simplified procedure

If the conditions are met, the court approves the request and initiates the simplified procedure, in which case the debtor enters the bankruptcy procedure directly, without going through the observation period, as presented in point II.1 above.

2. (Depending on the type of the proceedings) The protection granted to the debtor against its creditors.

The following questions should be addressed for each proceeding, provided by the law of the country:

- i) What kind of protection is granted?** (e.g., the creditors may not enforce any court decision against the debtor's assets, etc.)

Restructuring agreement

In addition to the measures negotiated with the creditors and expressly provided in the agreement, the law provides that once the restructuring agreement is confirmed by the court, and during its execution, no affected

creditor may trigger an insolvency procedure against the debtor

Preventive agreement

If the preventive agreement procedure is initiated, all the enforcement procedures against the debtor are suspended by law for a period of 4 months, which may be extended to 12 months from the moment the preventive agreement has started and until the restructuring plan is homologated. As an exception, wage-claim enforcement procedures shall not be suspended by law, but only upon the debtor's request, if certain requirements are met.

Moreover, during the suspension of the enforcement procedures against the debtor, until the homologation of the restructuring plan, all penalties, interest and other expenses related to the debt will also be suspended.

As of the moment the restructuring plan is homologated, the enforcement procedures regarding the affected claims against the debtor are suspended. The penalties, interest and other expenses related to the debt will be suspended according to the provisions of the restructuring plan.

Also, for the entire duration of such procedure, the insolvency procedure cannot be started against the debtor.

Insolvency procedure

If the insolvency procedure (regardless of the form) is initiated, all the judicial and/or extrajudicial claims, as well as all enforcement procedures against the debtor are suspended. Moreover, creditors cannot start any new such claims or procedures.

Another protection granted to the debtor refers to the suspension of the penalties, interest and other expenses related to the debt.

ii) What is the extent of the protection? (e.g., it includes all of the debtor's assets; is it limited to several assets for which the debtor may ask for protection? Is it at the court's discretion to include any asset? Etc.)

Preventive agreement

All the enforcement procedures started before the preventive agreement shall be suspended by law, together with the enforceable titles obtained after the start of the preventive agreement, for a period of 4 months – which can be prolonged to 12 months – since the commencement of the preventive agreement, until the homologation of the restructuring plan. After the homologation of the restructuring plan, the enforcement procedures regarding the affected claims against the debtor will be suspended.

The suspension includes all the debtor's assets that are being enforced at the date of the preventive agreement.

Insolvency procedure

If the insolvency procedure (regardless of the form) is initiated, all the judicial and/or extrajudicial claims, as well as all enforcement procedures against the debtor are suspended. Moreover, creditors cannot start any new such claims or procedures.

The suspension includes all the debtor's assets that are being enforced and all the judicial/extrajudicial claims filed against the debtor.

In respect to the suspension of the penalties, interest and other expenses related to the debt, from the moment the insolvency procedure is started and until it is finalized, no such expenses are incurred by the debtor.

iii) By whom it is granted? (e.g., by a court decision or by injunctions or directly by the law, etc.)

Preventive agreement

The suspension is granted *de iure* and is only mentioned in the decision.

Insolvency procedure

The suspension is granted *de iure* and it is not necessary to be mentioned in any court decision.

iv) Does the protection include only the debtor, or may it cover other persons as well (e.g., guarantors)?

Preventive agreement

The suspension includes all the debtor's assets that are being enforced at the date of the preventive agreement. However, such protection is only granted to the debtor and shall not be extended to third parties, such as guarantors.

Insolvency procedure

The suspension includes all the debtor's assets that are being enforced and all the judicial/extrajudicial claims filed against the debtor. However, such protection is only granted to the debtor and shall not be extended to third parties, such as guarantors.

v) When is the protection granted? (e.g., in the rehabilitation proceeding in Greece, the debtor may apply before a court for protection of its assets before any agreement has been concluded with its creditors. After the agreement is concluded, different protection applies).

Preventive agreement

The protection is applicable as of the moment the preventive agreement procedure starts until it is finalized.

Insolvency procedure

The protection is applicable from the moment the insolvency procedure is started, until such procedure is finalized.

vi) For how long is the protection granted?**Preventive agreement**

The protection is applicable as of the moment the preventive agreement is started, until such procedure is finalized.

Insolvency procedure

The protection is applicable as of the moment the insolvency procedure is started, until such procedure is finalized.

vii) Which creditors are bound by the protection?**Restructuring agreement**

All creditors.

Preventive agreement

All creditors.

Insolvency procedure

All creditors.

viii) Any other particularities of the procedures of each country (if any).**The Early Warning procedure**

A recent change to the insolvency law is the introduction of the Early Warning procedure through which professionals will receive automatic alerts from the Romanian tax authorities regarding the non-performance of certain fiscal obligations to the state budget, state social security budget and unemployment insurance budget, as well as relevant information regarding the recovery solutions.