



Fall | 21



INTERNATIONAL LAWYERS NETWORK



PETERKA & PARTNERS

Bankruptcy, Insolvency & Rehabilitation Proceedings in Romania

ILN RESTRUCTURING & INSOLVENCY GROUP



This guide offers an overview of legal aspects of bankruptcy, insolvency and rehabilitation in the requisite jurisdictions. It is meant as an introduction to these marketplaces and does not offer specific legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship, or its equivalent in the requisite jurisdiction.

Neither the International Lawyers Network or its employees, nor any of the contributing law firms or their partners or employees accepts any liability for anything contained in this guide or to any reader who relies on its content. Before concrete actions or decisions are taken, the reader should seek specific legal advice. The contributing member firms of the International Lawyers Network can advise in relation to questions regarding this guide in their respective jurisdictions and look forward to assisting. Please do not, however, share any confidential information with a member firm without first contacting that firm.

This guide describes the law in force in the requisite jurisdictions at the dates of preparation. This may be some time ago and the reader should bear in mind that statutes, regulations, and rules are subject to change. No duty to update information is assumed by the ILN, its member firms, or the authors of this guide.

The information in this guide may be considered legal advertising.

Each contributing law firm is the owner of the copyright in its contribution. All rights reserved.

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. Ad-hoc mandate

If the debtor faces financial difficulties, it can request the court to open the ad-hoc mandate procedure. The purpose of such procedure is for the debtor and its creditor(s) to reach an agreement, by reducing the debt or rescheduling due debts. Also, other measures may be decided, such as terminating certain agreements, reducing personnel, etc.

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, who drafts the preventive agreement project, which 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 24 months, with the possibility of extending it for another 12 months.

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 by an additional year. 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.)

Ad-hoc mandate

The law does not provide any protection for the debtor, except for the measures negotiated with the creditors and expressly provided in the agreement.

Preventive agreement

If the preventive agreement procedure is initiated, all the enforcement procedures against the debtor are suspended. 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. However, creditors who obtain an enforceable title may start new enforcement procedures against the debtor.

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

Contrary to the insolvency procedure, starting the preventive agreement procedure does not suspend the penalties, interest and other expenses related to the debt.

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 from the acknowledgement of the court decision

confirming the preventive agreement until the procedure is finalized. Nevertheless, the debtor may request temporary protection when filing the request for the preventive agreement procedure. If the request for temporary suspension is admitted, it shall be in effect until the court admits or rejects the main request for the preventive agreement procedure.

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 from the acknowledgement of the court decision confirming the preventive agreement until the procedure is finalized.

Insolvency procedure

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

vii) Which creditors are bound by the protection?

Ad-hoc mandate

The creditors who signed the ad-hoc mandate.

Preventive agreement

All creditors.

Insolvency procedure

All creditors.

viii) Any other particularities of the procedures of each country (if any).

N/A