

INVESTING IN ROMANIA

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LEGAL BACKGROUND

The normative act that regulates the procedure necessary for covering the liabilities of insolvent debtors through either reorganization of the entrepreneur and its activity, the liquidation of certain assets in the patrimony of the same up to the liquidation of the liabilities or through bankruptcy, is Law no. 85/2006 regarding the insolvency procedure published in the Romanian Official Gazette no. 359 of April 21, 2006. This normative act, which integrally supersedes the old regulation enacted back in 1995, is in harmony with the E.U. solvency procedures, by introducing an accelerated and simplified procedure which leads to the expel of insolvent debtors from the judicial and economic circuit, thus contributing to the improvement of the business environment. The procedure set out by Law no. 85/2006 was subsequently amended by Government Emergency Ordinance no. 86/2006, by Government Emergency Ordinance no.

173/2008, approved as amended and supplemented by Law no. 277/2009.

For better regulation of the international private law relations in the insolvency field, Law no. 637/2002 was published in the Romanian Official Gazette no. 931 of December 19, 2002, which was subsequently amended by Government Emergency Ordinance no. 119/2006.

Taking into account the need for special regulations of the insolvency procedures in the banking and insurance area, Ordinance no. 10/2004 regarding the judicial reorganization and the bankruptcy of the credit institutions was published in the Romanian Official Gazette no. 84 of January 30, 2004, and Law no. 503/2005 regarding the financial recovery and the bankruptcy of the insurance companies in the Romanian Official Gazette no. 1193 of December 14, 2004.

THE GENERAL INSOLVENCY PROCEDURE STIPULATED BY LAW NO. 85/2006

Conditions for the Commencement of the Procedure

(a) Economic operators subject to the procedure

The procedure implemented by Law no. 85/2006



applies to any of the following categories of individuals or legal entities that do not possess sufficient money funds to pay their uncontested, liquid and enforceable claims, such as:

- (i) Companies;
- (ii) Consumers' co-operative companies and co-operative organizations;
- (iii) Individual traders, acting solely, and family associations (exclusively under simplified procedure);
- (iv) Agricultural companies;
- (v) Groups of an economic interest;
- (vi) Any other private law legal entity that carries out economic activities.

(b) Commencement of the insolvency procedure

The commencement of the procedure provided for by Law no. 85/2006 is made on the date of the admission by the syndic judge appointed by the competent tribunal, of the application lodged by:

- (i) The debtor,
- (ii) Any of the debtor's creditors
- (iii) Any other person or entity specially provided by the law.

Debtor

The law obliges the debtor that is undergoing insolvency to submit an application for opening insolvency procedures with the tribunal, within 30 days following the occurrence of the state of insolvency. In the case of the debtor for whom insolvency is imminent, such debtor shall have the right, but not the obligation, to file said application. The early submission of the application, as well as the submission thereof in bad faith shall result in the patrimonial liability of the debtor - either individual or legal entity - for the caused prejudices. Through its application, the debtor may choose to be subject to the simplified procedure that implies that the bankruptcy procedure is directly applicable. The debtor's application will be subject to urgent judgment in closed session within 5 days.

Creditor

Any creditor that has a claim, which is certain (the existence of which is doubtless), liquid (which has a definite or at least determinable amount), due (which has reached the due date and the enforcement of which may be requested) of more than 30 days and having a value exceeding RON 30,000 (for the creditors in their capacity of employees the value is that of 6 minimum wages) may file with the tribunal an application against a debtor who/which is presumed to find himself in

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insolvency.

Effects of the Commencement of the Procedure

As an effect of the commencement of the insolvency procedure, the official receiver or liquidator (for the simplified procedure) shall send a notice to the debtor/ creditor, as to the trade registry office or any other registry where the debtor might be registered. This notice will also be published in a large circulation newspaper, as well as in the Insolvency Procedure Gazette, official publication that facilitates summoning or convening procedures and any document subpoena.

On the date of commencement of the procedure, all court actions or measures for the enforcement of claims over the debtor or the debtor's assets, save for the remedies at law initiated by the debtor, shall be suspended by law. Also, at the same time, any interest, penalty for late payments or any other penalty deriving from debts to be claimed before the commencement of the insolvency procedure are not accruing anymore and the debtor's shares can no longer be sold on the stock exchange market until the confirmation of the reorganization plan.

Also, the debtor has no longer the right to administrate his assets, except for the case when he announced his intention to reorganize the company. After the resolution for the commencement of the procedure is deemed final, all documents and correspondence issued by the debtor, official receiver or liquidator shall include, obligatorily and in visible fonts, in Romanian, English and French, a mention reading "in a state of insolvency."

Two procedures may be commenced pursuant to the admission of an application for opening insolvency procedures: judicial reorganization and bankruptcy.

Judicial reorganization is decided in the event that after the commencement of the procedure and the finding of the state of insolvency one approved a plan for the reorganization of the debtor's activity in view of the economic recovery of the debtor and the full satisfaction of the creditors' claims. After the reorganization plan has been confirmed, by means of a decision of the syndic judge, the debtor shall conduct its activity under the supervision of the official receiver in compliance with the agreed plan.

In case (i) the payment obligations and all other undertakings are not properly fulfilled in accordance with the terms stipulated in the confirmed plan, or the conduct of the debtor's

activity throughout the reorganization of the same triggers losses with respect to its assets, (ii) the debtor declared its intention of reorganization, yet it failed to propose a reorganization plan, (iii) the debtor chooses the direct bankruptcy simplified procedure, or (iv) the official receiver's plan proposing the application of the bankruptcy procedure is approved, the syndic judge shall decide upon the commencement of the company's liquidation procedure.

Through the decision of opening bankruptcy procedures, the syndic judge shall pronounce the dissolution of the debtor company and it shall resolve upon the following:

- Annulment of the debtor's right of administration;
- Appointment of a temporary liquidator (in case of general procedure), as well as the setting of the liquidator's duties and remuneration of the same according to criteria established by the law on the organization of professions;
- Confirmation of the official receiver in capacity of liquidator (in case of simplified procedure);
- The maximum term for the transfer of the administration of the property from the debtor/official receiver to the liquidator (in case of general procedure), together with the list of documents and operations carried out after the commencement of the procedure;
- Drafting by the official receiver and delivery to the liquidator, within a maximum of 10 days following the commencement of the bankruptcy procedure, of a list including the names and the addresses of the creditors and all of the claims thereof as of the date of commencement of the bankruptcy procedure, and pointing the claims that occurred after the commencement of the

procedure; and

- Notice of the commencement of the bankruptcy procedure.

The syndic judge, through the judicial liquidator, shall also decide upon taking insuring measures and measures for preservation of the debtor's assets to undertake the judicial liquidation.

The entire procedure for the liquidation of the debtor's assets is carried out under the control of the syndic judge who supervises the activity of the judicial liquidator and takes the necessary steps for the sale of the debtor's assets and the distribution to the creditors of the amounts resulting from the liquidation.

Closing of the Procedure

In case that during any stage of the insolvency procedure, it is ascertained that there are not enough assets in order to cover all administrative costs and no creditor offers to make advance payments for this purpose, the syndic judge delivers a judgment for the closing of the procedure, ordering as well the removal of the debtor from the specific register.

The reorganization procedure is closed through a resolution, once all payment obligations assumed in the confirmed schedule are fulfilled.

Once the liquidation stage is reached, the bankruptcy procedure shall be closed when the syndic judge approves the final report, when all of the debtor's funds and assets are distributed and when the unclaimed funds are deposited with the bank. Pursuant to an application from the liquidator, the syndic judge shall render a decision, closing the

REGULATION OF THE INTERNATIONAL PRIVATE LAW RELATIONS IN THE INSOLVENCY FIELD

procedure and ordering the annulment of the company, as the case may be.

The international private law relations are regulated by Law no. 637/2002, the scope of which includes:

- The cases where a foreign court or a foreign representative seeks assistance in Romania with respect to a foreign insolvency procedure;
- The cases where assistance is sought in a foreign state with respect to a procedure that is performed in accordance with Law no. 85/2006 regarding the insolvency procedure;
- The cases of concomitant performance of a Romanian insolvency procedure and a foreign



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insolvency procedure with respect to the same debtor;

- The cases where the debtors or other interested persons in a foreign state are seeking the commencement of the procedure provided for under Law no. 85/2006 in Romania or to take part to an already commenced insolvency procedure.

The Law sets out the right of direct access of foreign representatives (individuals or legal entities, including the persons appointed on a temporary basis, who are authorized, within the framework of a foreign procedure, to manage the reorganization or the liquidation of the debtor's goods and activity or to act as a representative of a foreign procedure) to the Romanian courts.

The foreign procedure represents the judicial or the administrative procedure, carried out in accordance with a foreign state's relevant legislation on insolvency, including the interim procedure, where the debtor's assets and activity are subject to the control or the supervision of a foreign court, for the purpose of such debtor's activity's reorganization or liquidation.

Therefore, the foreign representative, individual or legal entity, authorized in a foreign procedure to administrate the reorganization or the liquidation of debtor's assets and activity or to act as a representative of a foreign procedure, holds an active procedural capacity to file a claim for the commencement of the procedure, in accordance with the provisions of Law no. 85/2006, if all other requirements necessary for the commencement of such procedure are met according to Romanian law. At the same time, the foreign representative may participate in an already commenced procedure according to the insolvency law.

In order to capitalize upon the rights provided for under Law no. 637/2002, the foreign representative shall file before the Romanian court a claim for the acknowledgment of the foreign procedure in which the respective representative was designated.

As an effect of the acknowledgment of the foreign procedure, the following shall be rightfully suspended: (i) the claims or the legal actions of an individual nature, related to goods, rights and obligations of the debtor, (ii) the deeds, operations and any other measures of



individual enforcement over the debtor's goods, and (iii) the debtor's right to assign, encumber or dispose in any other way of its own goods, subject to nullity. Similarly to the rights acknowledged by the law for the Romanian creditors, as of the date of acknowledgement of the foreign procedure, the foreign representative may choose to file claims for the annulment of the judicial acts concluded by the debtor to the detriment of its creditors.

**THE BANKRUPTCY PROCEDURE OF
THE CREDIT INSTITUTIONS
STIPULATED BY ORDINANCE NO.
10/2004**

**General Conditions for the
Commencement of the
Procedure**

The special bankruptcy procedure of the credit institutions, as set by Ordinance no. 10/2004 is enforceable to all Romanian credit companies, including their subsidiaries headquartered abroad and to the credit cooperatives. According to the aforementioned law, a credit institution is in insolvency in one of the following situations:

- The credit institution is in a state of

manifest inability to pay its due debts with the available cash amounts;

- The solvency index of the credit institution has dropped below 2%;
- The withdrawal of the credit institution's license, in compliance with the legal provisions, as a consequence of the inability of financial recovery of the credit institution.

The Credit Institution

The law obliges the credit institution that is in a state of insolvency to submit an application for the commencement of the procedure to the tribunal, within 30 days following the occurrence of the state of insolvency.

Creditor

Any creditor that has a claim, which is certain, liquid and due (as per the provisions of Law no. 85/2006) may file with the tribunal an application against the credit institution that has not fully discharged such debt within 30 business days calculated from the date of maturity (for the central credit cooperatives and the credit cooperatives associated with them) or within 7 business days calculated from the date of maturity for the rest of the credit institutions.

The creditor will not be able to submit the application without proving that previous to submission he filed a forced execution claim against the credit institution's bank accounts and the National Bank of Romania, acting as attached third party, conveyed that the said credit institution has no available funds to fully discharge the debt.

National Bank of Romania

The National Bank of Romania, acting as banking supervising authority, can file with the tribunal an application against the credit institution which is in a state of insolvency. The application will be accompanied by the Board of Directors' decision of withdraw of the institution's license and any other documents needed to justify the application.

**Effects of the Commencement of
the Procedure**

As an effect of filing the application by any of the aforementioned parties, the syndic judge will immediately notify the other parties involved. Furthermore, the National Bank of Romania will appoint an interim receiver that will take all the necessary measures to foreclose the diminution of the current assets and the

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accrual of debts of the credit institution. When a liquidator is appointed, the assignment of the interim receiver will cease.

When the procedure commences the syndic judge will notify the commencement to the insolvent credit institution or to the creditor of the said institution and to the liquidator, the Banking Deposits Guarantee Fund and the Trade Register Office where the credit institution is registered. Furthermore, the commencement decision will be conveyed to the National Bank of Romania, which will close all the existent bank accounts of the institution opened at the said bank.

On the date of commencement of the procedure, one shall suspend by law all court or extra-court actions for the achievement of the claims over the credit institution or the credit institution's assets. Also, at the same time, any interest, penalty for late payments or any other penalty deriving from debts to be claimed before the commencement of the insolvency procedure are not accruing anymore.

Subsequent to the commencement of the insolvency procedure, it is expressly forbidden for the management and the relevant shareholders of the credit institution to sell their stock or shares held in the aforesaid institution without the syndic judge's approval.

Moreover, following the issuance of the judicial decision regarding the insolvency of the credit institution, the liquidator has to draft a report which must contain among other information the means of liquidation. Subsequent to the approval of the syndic judge of liquidation through one or several transactions concerning acquisition of existing assets and taking over the liabilities by a credit institution having a good financial situation, the liquidator will arrange the negotiations for the said transactions.

If no valid proposals are received for the transactions or if the syndic judge does not approve the transaction, the liquidation of the credit institution will take place through the other means provided by law, namely selling of institution's assets, transfer of debts, etc.

Closing of the Procedure

The bankruptcy procedure of a credit institution will be closed through the syndic judge's decision, subsequent to his approval of the final report and the distribution of all the available

funds. The funds that are not claimed will be consigned to a credit institution.

International Insolvency of the Credit Institutions

Ordinance no. 10/2004 distinctly regulates the bankruptcy procedure of the Romanian credit institutions and their subsidiaries located in other EU countries, as well as the reorganization and the bankruptcy procedures enforceable to the Romanian subsidiaries of foreign credit institutions.

FINANCIAL RECOVERY AND THE BANKRUPTCY OF THE INSURANCE COMPANIES

General Provisions

The procedures concerning the financial recovery and the bankruptcy of insurance companies are stipulated in Law no. 503/2004 and are applicable to the Romanian insurance and reinsurance companies and their subsidiaries, as well as the subsidiaries of third party insurance companies headquartered in Romania.

The aforesaid law regulates the financial recovery procedures that can be based either on a recovery plan or on special administration procedure and the bankruptcy procedure if the financial recovery procedures have failed. Furthermore, the same law regulates the international bankruptcy procedures of the insurance companies.

The Financial Recovery Procedure

According to the existing legal provisions, Insurance Supervisory Commission has the duty to periodically ensure the financial status of the insurance companies, either on the request of the insurance creditors or by default. The Insurance Supervisory Commission is the only entitled authority to decide on the enforcement of the financial recovery procedures of the insurance companies for the purpose of avoiding the state of insolvency and the bankruptcy procedures.

The financial recovery procedures will be started against an insurance company, in one of

the following situations:

(i) The insurance company does not fulfill the obligation to convey, within 48 hours from the Insurance Supervisory Commission's request, the financial accounts and the minimum solvency margin;

(ii) The minimum solvency margin's value depreciates below the minimum margin provided by the regulations issued by the Insurance Supervisory Commission;

(iii) The value of the available solvency margin depreciates below the minimum margin provided by the legal provisions regarding the safety fund.

On the aforementioned situations the Insurance Supervisory Commission can decide through a justified ruling opening of the procedure by one of the following: (a) the insurance company's recovery based on a financial recovery plan; or (b) the insurance company's recovery by special administration.

If the financial recovery procedure based on a financial recovery plan is started, the board of directors or the sole director as the case may be, must draft and hand in within 20 days from the opening of the procedure a recovery plan to Insurance Supervisory Commission's headquarters. Following the plan's examination, the Insurance Supervisory Commission can approve the plan or resend it to be supplemented or even reject it. If the recovery plan is rejected, the Insurance Supervisory Commission can force the insurance company to draft a financing program in emergency conditions, or appoint a special receiver or close the financial recovery procedure and file with the tribunal a bankruptcy application.

If the financial recovery procedure by special administration is enforced, the Insurance Supervisory Commission will appoint a person to act as special receiver which will take all the necessary measures required to restore the financial situation of the insurance company with the observation of the provisions, terms and conditions enclosed in the financial recovery resolution.

The financial recovery procedure is closed when the Insurance Supervisory Commission either notices the restoration of the financial accounts; either withdraws the charter of the insurance company and files with the tribunal a bankruptcy application.

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Commencement of the Bankruptcy Procedure

The bankruptcy procedure can be opened against an insurance company by one of the following:

- (i) The Insurance Supervisory Commission;
- (ii) The insurance company which is in a state of insolvency;
- (iii) The insurance company's creditors.

If the insolvency procedure is started by insurance company, the bankruptcy application must be sent to the Insurance Supervisory Commission firstly, prior to be filed with the tribunal. The Insurance Supervisory Commission must convey through a statement of defense if for the aforementioned company a financial recovery procedure is started or not.

Effects of the Commencement of the Procedure

As an effect of filing the application by any of the aforementioned parties, the tribunal will immediately notify the insurance company which is in a state of insolvency, its creditors and the Insurance Supervisory Commission. Furthermore, the tribunal withdraws the company's directors the rights to represent the insurance company, to administer and to dispose the company's estate.

Subsequent to the commencement of the insolvency procedure, it is expressly forbidden for the relevant shareholders and the management of the insurance company to sell their stock or shares held in the aforesaid company without the previous Insurance Supervisory Commission's approval and the syndic judge's approval.

On the date of commencement of the

procedure, one shall suspend by law all court or extra-court actions for the achievement of the claims over the credit institution or the credit institution's assets.

Moreover, following the issuance of the judicial decision regarding the insolvency of the insurance company, the liquidator has to draft a report which must contain among other information the means of liquidation. Subsequent to Insurance Supervisory Commission's approval and the approval of the syndic judge of liquidation through one or several transactions concerning acquisition of existing assets and taking over the liabilities by an insurance company having a good financial situation, the liquidator will arrange the negotiations for the said transactions.

If no valid proposals are received for the transactions or if the Insurance Supervisory Commission or the syndic judge do not approve the transaction, the liquidation of the credit institution will take place through the other means provided by law, namely selling of company's assets, transfer of debts, etc.

Closing of the Procedure

The bankruptcy procedure of an insurance company will be closed by the tribunal, through the syndic judge's resolution in one of the following situations: the final report was approved; all available funds and/or goods of the insurance company have been allotted, the creditor's debts have been paid based on legal settlements or all the due amounts of money have been recovered by the Guarantee Fund. The rest of available money left subsequent to the creditors' payment will be transferred to the Guarantee Fund to be managed and run by the aforesaid Fund.

In case that during any stage of the insolvency procedure, it is ascertained that there are not

enough assets in order to cover all administrative costs and no creditor makes advance payments for this purpose, the syndic judge may decide upon the closing of the procedure followed by the writing-off of the company.

International Insolvency of the Credit Institutions

Law no. 503/2004 distinctly regulates the bankruptcy procedure of the Romanian insurance companies and their subsidiaries located in other EU countries, as well as the reorganization and the bankruptcy procedures enforceable to the Romanian subsidiaries of foreign insurance companies.