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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RESTRUCTURING 2022

ROMANIA

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1. Overview

1.1. What domestic pieces of legislation and international instruments apply to restructuring and insolvency matters in your jurisdiction?

In Romania, restructuring and insolvency proceedings related to companies are both governed by *Law no. 85/2014 on insolvency proceedings* (tr. *Lege nr. 85/2014 privind procedura insolventei*) (Insolvency Law).

In principle, the following proceedings may be applied to debtors (legal entities and, in some cases, certain categories of natural persons): general proceedings, by way of which, following an observation period, a debtor may undergo **(A)** judicial reorganization proceedings or **(B)** bankruptcy proceedings (the later directly or upon failure of judicial reorganization proceedings).

Within judicial reorganization proceedings the debtor continues to conduct limited commercial activities under judicial observation, provided that such activities are directed exclusively towards payment of its debts, according to an (approved) payment schedule.

Bankruptcy proceedings (also referred to as liquidation proceedings) are aiming at liquidating all of the debtor's assets in order to settle its debts. Bankruptcy proceedings trigger the dissolution of the debtor and its deletion from the register where it is registered (i.e., trade registry, etc.).

The insolvency of natural persons is governed by *Law no.151/2015 on the insolvency procedure of individuals*. Given that this legislation has entered into force quite recently, namely on January 1, 2018, there is no consistent judicial practice on this issue.

Additionally, cross-border insolvency proceedings are governed by *Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings*. This has seen constant application in most of the cross-border insolvency proceedings, but also the previous *EC Regulation 1346* as well.

1.2. Do you have a well-established legal regime governing restructuring and insolvency, or do you have rather frequent legislative changes in the area?

Considering the evolution over time of the legislation that has been constantly updated following the 2008 economic downturn, the legal regime related to insolvency matters in Romania is well-established, being substantially amended only twice in the past 20 years (through *Law no. 85/2006 on insolvency proceedings* and through *Law no. 85/2014 on insolvency proceedings*) and having minor modifications over time given European directives or according to the evolution of the relevant case law.

The latest amendment of the Insolvency law is related to the implementation of the *EU Directive on preventive restructuring (2019/1023*) through *Law no. 216/2022*, which entered into force on July 17, 2022.

1.3. Are there any special regimes applying to specific sectors?

The 2nd title of the Insolvency Law, entitled "Insolvency Proceeding" contains special legal provisions for the following practice areas:

Chapter II. Special provisions concerning the insolvency of a group of companies;

Chapter III. Special rules concerning the bankruptcy of credit institutions;

Chapter IV. Provisions concerning insurance/re-insurance undertakings.

In addition, according to Section 1.1., the Romanian legislation also provides a special regime for the insolvency of natural persons, governed by *Law no. 151/2015* regarding the insolvency procedure of natural persons.

1.4. Were any changes to restructuring or insolvency laws adopted in response to the COVID-19 pandemic? If so, what were they?

On March 16, 2020, a state of emergency was decreed in Romania for a period of 30 days, with measures being adopted in all areas with social and economic impact by *Presidential Decree no. 195/2020*. Among them, temporary measures have also been instituted in the field of justice, so implicitly in the case of settling insolvency matters, these being applied exclusively during the state of emergency.

Most of the measures had as objectives the digitization of the justice system and the suspension of civil trials, except for the cases of special urgency established by the list of the Management Colleges of the High Court of Cassation and Justice and of the Courts of Appeal.

In insolvency, according to the guidelines of the High Court of Cassation and Justice and of the Courts of Appeal, it was concluded that during the state of emergency in Romania, the trial continues only regarding the claims for the provisional suspension of the procedures for the enforcement of the debtor's assets until the decision on the opening of the insolvency procedure, the rest of the cases being suspended until the end of the state of emergency.

Moreover, as per *Decree No. 195/2020*, the insolvency proce-

dure is not suspended, but only the trials regarding the main insolvency file and the associated/related files.

Basically, as in most European countries, the legislation sought to aid the continuation of the new and/or pending procedures, including therein the insolvency procedures, by allowing more digitalization of the overall process and thus limiting social contact when it was not absolutely necessary.

1.5. Are there any proposed or upcoming changes to the restructuring insolvency regime in your country?

Given that the latest amendment to the Insolvency Law entered into force on July 17, 2022, (see Section 1.2.), having an important input on the restructuring proceedings governed by the Romanian legislation, we don't foresee any other substantial changes soon.

1.6. Has your country adopted or is your country considering the adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

The *UNCITRAL Model Law on Enterprise Group Insolvency*, issued by the UNCITRAL secretariat on May 30, 1997, has been implemented into the national legislation in 2002, as per the legal provisions established in the 3rd Title of the Insolvency Law.

2. Insolvency

2.1. Is there an insolvency test that triggers certain obligations for directors or officers of the debtor company? If so, what is the test and what are the consequences for failure to meet these obligations?

According to the Insolvency Law and other normative acts with impact in the field of insolvency, the debtor's directors are subject to the following obligations and sanctions

A. Failure to file for insolvency or filing too late

The directors of an insolvent company are under the obligation to file for insolvency within 30 days of the occurrence of insolvency.

In case of failure to file for insolvency, or late filings (i.e., later than six months after the expiry of the above-mentioned 30-day term), the legal representative(s) of the debtor (may) commit the crime of "simple bankruptcy" (tr. *bancruta simpla*).

B. Other cases of criminal liability

The director(s) of a debtor may, in principle, be held liable, if they *inter alia* **A.** used the assets or the credits of the legal entity for their own benefit or for the benefit of other persons; **B.** performed production activities, trading acts, or provided services for personal purposes under the umbrella of the legal entity; **C.** have ordered, for personal interest, the continuation of an activity which was manifestly causing the legal entity to be unable to make payments; **D.** have kept fictitious accounting records, caused some accounting documents to disappear or failed to keep the accounting records as required by the law; **E.** have embezzled or concealed part of the assets of the legal entity or fictitiously increased the liabilities thereof; **F.** used subversive means to procure funds for the legal entity in order to delay the inability to make payments; **G.** during the month before payments were ceased, have paid or instructed payments to a specific creditor to the detriment of the other creditors; **H.** have intentionally committed any other act that concurred to the insolvency of the debtor, as determined according to this chapter.

Respective actions may trigger joint and several liabilities of directors. In simple terms, in order to avoid criminal charges, a director would have to prove that they did not play an active role in the management of the company or opposed the performance of respective transactions/activities.

C. Civil liability (legal and or contractual)

The company's director(s) may also be held liable from a civil point of view, according to the mandate granted by the company.

Directors can be held liable to the extent they have performed transactions/activities exceeding the limits of the mandate granted to them and if transactions/activities were in breach of legal provisions.

D. Interdiction

Pursuant to *Law no. 31/1990 on commercial companies* (Companies' Act), persons convicted of fraud, embezzlement, bankruptcy-related crimes, and other crimes against property may not legally act as founders, directors, or members of the managing bodies of a company under Romanian law.

2.2. What types of insolvency procedures are established by law in your jurisdiction?

In addition to Section 1.1., the insolvency procedure governed by the Insolvency Law is divided into two different types: the general procedure and the simplified procedure. In turn, the general procedure is divided into two stages:

General proceeding

A. Judicial reorganization proceedings

Judicial reorganization proceedings imply the drafting, approval, implementation, and observance of a reorganization plan setting forth one or all of the following: the operational and/or financial reorganization of the debtor, the corporate reorganization of the debtor by changing the shareholding

structure, and reducing activities by way of disposal of assets from the debtor's estate, etc.

The reorganization plan may entail either the restructuring of the debtor with the continuation of its activity or, as an alternative, the disposal of certain (or even all) assets from the debtor's estate, or a combination thereof. Further, the reorganization plan may entail amendments to the debtor's constitutive act, without the approval of the debtor's shareholders.

A reorganization plan may be advanced by the following persons: **(A)** the debtor, with the approval of its sole shareholder or the shareholders' meeting **(B)** the judicial administrator, or **(C)** one or more creditors holding together more than 20% of the aggregate amount of all payables.

The reorganization plan shall mention the prospects for a recovery in light of the possibilities and the specifics of the debtor's business, the availability of financial means as well as the market conditions for the debtor's line of business. The reorganization plan shall also indicate the creditors' categories, the quantum of their debts, and the payment plan for said debts.

The reorganization plan is subject to approval by the creditors and to confirmation by the syndic judge.

During the confirmation of a reorganization plan and full consummation thereof, the debtor's estate is managed by the special trustee under the supervision of the judicial administrator.

The reorganization shall be terminated by the court either by allowing the debtor to recommence full commercial activities or ordering the commencement of bankruptcy proceedings (in case of non-performance of the reorganization plan).

B. Bankruptcy proceedings

Bankruptcy proceedings (or liquidation) essentially aim at liquidating all of the debtor's assets with a view to covering its receivables.

In the decision by way of which the debtor is placed into bankruptcy proceedings, the bankruptcy judge shall also pronounce the following: **(A)** the withdrawal of the debtor's right to manage its estate; **(B)** the appointment of the liquidator; **(C)** the term until the debtor/ judicial administrator has to hand over the management of the debtor's estate to the liquidator (together with a complete list of all actions performed after the commencement of the proceedings); **(D)** the notification regarding the commencement of the bankruptcy proceedings; **(E)** a complete list with all the creditors and their contact details with the indication of all the debts which arose after the commencement of the proceedings.

In case the debtor undergoes bankruptcy after confirmation of a reorganization plan, the creditors will participate in the bankruptcy proceedings with the amounts registered in the reorganization plan less the sums already distributed to them.

Transactions between the confirmation date of the reorganization plan and the commencement of the bankruptcy proceedings are presumed to be fraudulent except when the contracting party proves its good faith (tr. *buna credinta*) when concluding the transaction. Any gratuitous transactions (tr. *acte cu* titlu gratuit) are null and void.

As a general rule, liquidation starts once an inventory is completed. The liquidation of the debtor's estate is performed by the liquidator under the supervision of the bankruptcy judge and of the creditors.

The main goal of the liquidation is to maximize the proceeds from the debtor's estate. In principle, the sale of the debtor's assets shall be performed through tender proceedings. However, direct negotiation may be allowed under certain circumstances.

Moneys resulting from liquidation are subject to (partial) distribution to the creditors already during the procedure. At the closing of the liquidation, the final distribution takes place

Simplified proceedings

Simplified proceedings are characterized by the interdiction to undergo a reorganization procedure but not by the absence of an observation period. In most cases when the application of the simplified procedure is requested, a short period of time will be necessary in order to prove whether the conditions for simplified proceedings are met.

Simplified proceedings may directly be opened as bankruptcy proceedings, whereas the applicable procedural rules resemble the ones applicable in the case of general proceedings. There are minor differences only.

In simplified proceedings, the duties of the judicial administrator shall be performed/taken over by a liquidator.

The simplified procedure applies to the following categories of debtors (in a state of insolvency or imminent insolvency):

(A) Legal Entities which fulfill one of the following conditions:

(i) They do not own any assets;

(ii) their constitutive or accounting documents cannot be found;

(iii) their managing directors cannot be found;

(iv) their seat no longer exists or it differs from the one registered with the trade registry;

(B) Legal Entities which did not provide the court with all relevant documents; and

(C) companies that have been canceled from the trade registry prior to the insolvency application.

2.3. Who has the right to initiate insolvency proceedings?

General (insolvency) proceedings may be initiated by the debtor, by its creditors, or, in certain situations, by institutions provided by law, by way of filing a respective request with the competent court.

A debtor is obliged to request the commencement of the proceedings within 30 days of the date when it has become insolvent.

A debtor is insolvent in the event it disposes of insufficient monetary funds to settle its payables when due. If a debtor has not settled its payables to one or more creditors within 60 days of such payables becoming due, insolvency will be presumed *de iure*.

A creditor may file for insolvency of its debtor, if it holds against such a debtor, a certain, liquid, and exercisable receivable exceeding RON 50,000 (approximately EUR 10,000), which has remained unpaid for more than 60 days upon being due.

The procedure is opened by the competent court by rendering a decision in this respect (which decision takes immediate effect).

2.4. What are the consequences of commencing insolvency proceedings, in particular:

2.4.1. Does management continue to operate the business and/or is the debtor subject to supervision?

Within 10 days from the commencement of the general proceedings (or as the case may be, from the date the debtor's right to manage its estate has been withdrawn), the shareholders' meeting of the debtor (or its sole shareholder) must appoint a special trustee (legal or natural person).

As long as the debtor's right to manage their estate has not been withdrawn, the special trustee shall direct the debtor's activity.

If the powers of the debtor's management to manage the estate have been withdrawn, the management of the debtor's assets is taken over by the judicial administrator (tr. *administrator judiciar*), and the competencies of the special trustee are limited to representing the debtor's shareholders' interests in the insolvency proceedings.

According to the above-mentioned, the company's management does not play a significant role in the insolvency proceedings.

Their main tasks are:

- To provide the special trustee or the judicial administrator with all the documents provided by the Law, especially with the debtor's accountancy.
- To elect the special trustee, which represents the interests of the general stakeholders in the insolvency procedure

Given this, the mandate of the company's managers is terminated *ex lege* from the date the debtor's right to manage its estate has been withdrawn, or as the case may be, from the date the special trustee is appointed.

From the date of opening the insolvency procedure, the debtor's activity is supervised by the judicial administrator, or even led by him, in case of lifting the debtor's right of administration. The main duties of the judicial administrator are detailed in Section 2.5.

2.4.2. Does a moratorium or stay apply and if so, can it have an extraterritorial effect?

The efficiency of the insolvency procedure comes from its cumulative, collective character, but above all from its unitary nature, given that, as of the opening of the proceeding, the creditors' rights against the debtor may be recovered only through the insolvency proceeding, by lodging proofs of debt.

After the opening of the insolvency proceeding, all court actions, out-of-court actions, or enforcement procedures for the recovery of claims against the debtor's estate, born *prior* to the commencement of the insolvency proceeding, are stayed.

An exception to the above-mentioned stay applies to court actions intended to determine the existence and/or amount of some claims against the debtor arising *after* the opening of the proceeding. These claims are not subject to the suspension referred. In this case, the creditors may file a payment request (tr. *cerere de plata*) during the observation and reorganization period that shall be reviewed and answered by the judicial administrator.

On the other hand, the suspended claims may be reopened only if the decision ordering the opening of the proceeding is canceled, the resolution ordering the opening of the proceeding is revoked or the proceeding is closed according to Art. 178 of the Insolvency Law (if all creditors included in the final table of claims receive the amounts owed to them in the observation period or waive the trial during the observation period).

Where the decision to open the proceeding is canceled or revoked, as appropriate, the court actions or out-of-court actions for recovery of claims against the debtor's estate may be reopened and the enforcement procedure may be resumed.

The suspension of the above-mentioned claims is over on the date the decision to open the proceeding remains final. From this moment, both the judicial and extrajudicial action, as well as the stayed enforcement procedures, cease.

Given that the law does not provide special treatment for extraterritorial claims or enforcements and according to the principle *ubi lex non distinguit, nec nos distinguere debemus*, the suspension procedure governed by Art. 75 of the Insolvency Law also applies to extraterritorial court actions, out-of-court actions or forced execution procedures.

2.4.3. How does it impact the existing contracts (e.g., is the counter-party free to terminate them, can the debtor's pre-insolvency transactions be challenged)?

As a general rule, the judicial administrator is entitled to terminate contracts concluded by the debtor, which have not yet been substantially performed by the parties thereto. In the event such a contract is so terminated, neither party shall perform its further obligations and the debtor's counterparty may only file a claim for damages against the debtor's estate for the recovery of losses incurred. There are, however, specific rules for certain types of contracts. In such cases, as per the doctrine and case law, the debtor's contractual party may only claim the actual loss (tr. *prejudiciul efectiv suferit*) following the termination of the pending contract by the judicial administrator.

The judicial administrator is also entitled to challenge the validity of certain actions/transactions performed or concluded within a specified period prior to the opening of the general proceedings, which are deemed detrimental to the creditors and which may therefore be set aside if certain prerequisites are fulfilled.

2.5. Which steps do insolvency proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

See Section 2.2.

In addition, the participants carrying out all the steps provided by the Insolvency Law are: **(A)** the court, **(B)** the syndic judge, **(C)** the creditor's meeting and the creditors' committee, **(D)** the special trustee (tr. *administrator special*), and **(E)** the judicial administrator (tr. *administrator judiciar*) and the receiver (tr. *lichidator*);

(A) The court

All procedures (other than appeals) are incumbent on the Insolvency Section of the county court (tr. *tribunalul*) in the administrative district of which the debtor has its registered seat. The courts competent for appeals are the Courts of Appeal.

Summoning of parties as well as communicating any procedural deeds, notifications, etc. shall be performed via the Romanian Insolvency Procedures Bulletin.

(B) The syndic judge

The main duties of the syndic judge are: **(i)** rendering decisions on the opening of the proceedings (general or simplified proceedings, as the case may be), **(ii)** appointing a judicial administrator or a liquidator (as the case may be), **(iii)** resolving upon any claims filed by the judicial administrator or the liquidator for the cancellation of fraudulent transactions performed by the debtor, **(iv)** confirming the reorganization plan approved by the creditors committee (see Section 2.3.1.); **(v)** rendering the decision for closing the proceedings.

(C) The creditors' meeting and the creditors' committee

The creditors' meeting shall be convened and chaired by the judicial administrator unless otherwise specified by the law or ordered by the bankruptcy judge. The agenda for each session of the creditors' meeting must be made public in advance to all creditors. Matters not on the agenda may not be discussed in the respective session unless all creditors are present.

Sessions of the creditors' meeting are legally held if attended by **(i)** creditors holding at least 30 % of the total value of the payables due and **(ii)** a simple majority of the members on the creditors' committee. Decisions at the creditors' meeting require the vote of creditors holding at least half of the amount of the aggregate payables.

If a large(r) number of creditors is involved in the proceedings, the bankruptcy judge shall appoint a committee of three to five creditors for active involvement in the proceedings, particularly in supervising and/or approving certain actions/transactions of the judicial administrator or the liquidator (as applicable), i.e., the creditors' committee.

The creditors making up the creditors' committee shall be selected from the ones in the (preliminary) creditors' table holding the biggest receivables. All categories of creditors (i.e., state institutions, secured and unsecured creditors, etc.) should be represented.

The tasks of the creditors' meeting and the tasks of the creditors' committee (see the subsequent paragraph) are in essence the same. Should the bankruptcy judge not appoint a creditor's committee, the tasks of the latter shall be performed by the creditor's meeting.

The main tasks/rights of the creditors' committee (or creditors' meeting, as the case may be) are: **(i)** analyzing the economic situation of the debtor and advancing recommendations to the creditors meeting as regards maintaining the debtor's activity and proposed reorganization plans; **(ii)** reporting to the creditors' meeting on the performance of the judicial administrator's duties; **(iii)** requesting the withdrawal of the debtor's right to manage its estate; **(iv)** filing claims for the annulment of certain fraudulent transactions performed by the debtor if the judicial administrator fails to act in this respect.

(D) The special trustee – See Section 2.4.1.

(E) The judicial administrator and the receiver

The judicial administrator is appointed by the court when issuing the decision on the opening of the proceedings (judicial reorganization proceedings). Only a certified insolvency practitioner may hold the position of judicial administrator.

Creditors holding at least 50% of the aggregate amount of the debtor's due payables may, by way of the first creditors' meeting, apply with the court to appoint a specific judicial administrator. Otherwise, the syndic judge shall temporarily appoint an insolvency practitioner selected, at his discretion, from the official list published by the National Union of Insolvency Practitioners. Such a temporary appointment would be made until the first creditors' meeting.

One of the main tasks of the judicial administrator is to notify all of the debtor's creditors and to examine the statement of claims filed by said creditors. Following such examination, the judicial administrator shall draw up and file with the court the preliminary and (subsequently) the final table of the creditors holding accepted claims against the debtor. If the judicial administrator has accepted a creditor's claim by including it in the creditors' table, said creditor shall be entitled to participate in the proceedings (and potentially be allocated proceeds obtained therefrom).

Also, the judicial administrator has the right to terminate contracts or to challenge the validity of certain actions concluded by the debtor before entering into insolvency. In this regard, please see Section 2.4.3.

Regularly throughout the proceedings, the judicial administrator shall submit to the bankruptcy judge a report on the performance of their duties as well as a substantiated presentation of the costs incurred by the proceedings as well as costs incurred on funds from the debtor's estate.

In case of bankruptcy proceedings, the duties of the judicial administrator shall be performed by the receiver. As opposed to the judicial administrator, the receiver is not able to take part in any measures aiming at reorganization.

Consequently, the main task of the receiver will be the liquidation of the debtor's estate in order to settle the debtor's payables. The liquidator would still be able to perform the above-mentioned duties of the judicial administrator, however, such tasks would be performed within the limits of the liquidation proceedings, respectively having the sole and exclusive purpose of liquidating the debtor's assets (if any).

(F) The statutory manager(s) of the debtor – See Section 2.4.1.

2.6. In insolvency proceedings, do specific stakeholders' claims enjoy priority (e.g., employees, pension liabilities)? Can the claims of any class of creditor be subordinated (e.g., equitable subordination)?

The order of priority of claims of unsecured creditors within bankruptcy proceedings is the following:

(A) taxes, stamp duties, and any other expenses in connection with the sale of the debtor's assets and the insolvency procedure generally, including expenses necessary for preserving and administrating the debtor's estate, as well as the remuneration of the experts involved in the insolvency procedure (e.g., the judicial administrator, the liquidator);

(B) claims resulting from financing granted to the debtor in the observation period (respecting other certain legal conditions) or from financial resources obtained in order to facilitate achievement of the reorganization plan;

(C) receivables from financing granted in insolvency prevention procedures, as well as the practitioner's fees from such procedures;

(D) claims resulting from labor relations;

(E) claims resulting from the debtor's activity being continued after the opening of the proceeding, the ones related to the rights determined in favor of the counterparty pursuant to the motion for indemnification established following the termination of a contract by the judicial administrator, and the ones payable to third party acquirers acting in good faith or subsequent acquirers that restitute to the debtor the assets or the value thereof according to the admission of the judicial administrator's claims regarding the validity of certain actions/transactions (see Section 2.4.3.)

(F) budgetary claims;

(G) claims consisting in amounts payable by the debtor to third parties based on some obligations to provide financial support, minor children allowance, or to pay periodic amounts destined to assure the living means;

(H) claims consisting in the amounts determined by the syndic judge for support of the debtor and their family, where the debtor is an individual;

(I) claims representing bank loans and the related expenses

and interests, the ones resulting from delivery of products, provision of services or other works, from rents, as well as the claims resulting from the termination of leasing contracts under certain specific conditions;

(J) other unsecured claims; and

(K) subordinated claims, in the following preferential order:

i. the claims arising in the patrimony of bad faith third party acquirers of the debtor's assets and the ones due to subsequent bad faith acquirers according to the admission of the judicial administrator's claims regarding the validity of certain actions/transactions (see Section 2.4.3.), as well as the shareholder loans granted to the debtor – legal entity – by an associate or shareholder holding at least 10% of the share capital and from the voting rights in the general meeting of shareholders, respectively, or by a member of the economic interest group, respectively;

ii. benefits not distributed to associates;

iii. claims arising out of free deeds.

Claims of an inferior category shall be satisfied only after all claims from categories having superior rank were satisfied. Claims of creditors of the same priority are satisfied on a *pro rata* basis, considering the amount of their respective claims specified in the creditors' table.

In case of secured creditors, the funds obtained from the sale of assets from the debtor's estate, encumbered in the favor of a creditor by mortgages, pledges, retention rights, or other security interests, shall be distributed in the following order:

(A) taxes, stamp duties, and any other expenses in connection with the sale of the respective asset serving as collateral, including costs arising for the preservations of the respective collateral, as well as the remuneration of the experts involved in the insolvency proceedings (including the judicial administrator, receivers);

(B) claims of the respective secured creditor privileged creditors arising during the insolvency proceeding, including capital, interests, as well as other accessories, as the case may be;

(C) the claims of privileged creditors, comprising the entire capital, interests, increases, and penalties of whatever nature, including claims resulting from leasing contracts rescinded before the opening of the insolvency proceeding.

Should amounts resulting from the sale of collateral not suffice to fully cover the secured debts, it would be treated as unsecured creditors as regards the difference. Further, a creditor holding a secured receivable is entitled to participate in any distributions made prior to the sale of the asset(s) in which he holds the security interest. Respective sums received will be deducted from the sums such creditor is entitled to from the sale of its collateral.

2.7. What is a timeline for insolvency proceedings and how are they finalized?

The Insolvency Law does not provide for a period of time or a deadline for completing the insolvency procedure, but it establishes the principle of carrying out the procedure in a timely and reasonable time, in an objective and impartial manner, with minimum costs.

Moreover, even from the court practice, we cannot statistically detach a term in which the insolvency procedure is completed, its duration depending on the complexity of the debtor's activity, the value of his assets, and the procedural stages to be followed (judicial reorganization, simplified procedure, bankruptcy, etc.).

Domestic case law provides a wide range of timelines for such procedures ranging from 12 months up to even eight years, in the most complex matters.

The insolvency procedure is finalized by:

- The debtor's reintegration into the civil circuit: In case of achieving all the objectives set by the reorganization plan, the debtor resumes his commercial activity (business as usual);

- The dissolution of the company: After the assets from the debtor's estate have been liquidated, the syndic judge will give a sentence of closure of the procedure, which also orders the removal of the debtor from the register in which he is registered. The judicial administrator has the obligation to send the decision of conclusion to the registers where the debtor is registered and other administrative tasks in order to dissolve and deregister the debtor.

2.8. Are there any liabilities that survive the insolvency proceedings?

In theory, no. All payments towards creditors have to be made as per the provision of the insolvency law, by observing the ranking thereof. Closing the insolvency procedure would generally close all liabilities registered by the creditors therein.

In practice, however, we have seen payment plans concluded throughout the duration of the insolvency procedures in respect of current claims (i.e., born after the commencement of the insolvency proceedings), where such plans continued even after the closing of the insolvency procedure.

Only in case of filing a claim by the judicial administrator to attract liability against the persons responsible for the debtor's entry into insolvency, does their obligation to repair the created damage subsist after the closure of the procedure.

3. Restructuring

3.1. What formal and informal restructuring proceedings are available in your country?

The Insolvency Law provides for both insolvency prevention procedures and procedures for the creditor's recovery after the opening of the insolvency procedure.

Regarding the mechanisms made available to the debtor in difficulty (i.e., temporary cash flow difficulties without being a state of payment cessation), but which do not meet the conditions for the opening of insolvency proceedings, the Insolvency Law, as amended by *Law 216/2022 on the implementation of EU Directive no. 2019/1023*, provides the following procedures:

1. Early warning procedure

Provided by Chapter III, the procedure represents an innovation brought by *EU Directive no. 2019/1023* and consists in sending to the debtor an alert message regarding the non-execution of certain obligations by the tax body, the general assessment of the financial situation, the information on recovery solutions.

Also, the early warning procedure can be implemented by private entities, not only by the entity within the tax body.

2. Restructuring agreement

This is a relatively new procedure, in this aspect *EU Directive no. 2019/1023* coming to replace the *ad hoc* mandate procedure, retained by the practice as ineffective and used quite rarely by debtors.

In the *ad hoc* mandate procedure, the debtor could have filed a request for the appointment of an *ad hoc* trustee with the president of the Tribunal. The object of the ad hoc mandate was to conclude, within 90 days of appointment, a settlement between the debtor and one or several of its creditors, in view of overcoming the state of difficulty of the debtor's business.

The restructuring agreement represents, in fact, a contract proposed by the debtor and negotiated between the debtor and its creditors for the recovery of the business, there being similarities with the judicial reorganization plan both in terms of the data it must contain and in terms of voting by categories of creditors. After the creditors' vote, the restructuring agreement must be confirmed by the syndic judge, in an urgent procedure

If a restructuring agreement is voted on and confirmed according to the Insolvency Law, the debtor's activity will have to be restructured in accordance with its provisions. In particular, the rights of creditors holding claims forming the object of restructuring (including creditors who voted against or did not vote on it) will be modified in accordance with the provisions of the confirmed restructuring agreement.

The procedure ends either by fulfilling the restructuring agreement or by failing it, in the latter case, the law ordering the rebirth of the reduced claims by the agreement, as well as the recalculation of the accessories that have been suspended for the duration of the agreement.

3. The creditors arrangement

The creditors arrangement procedure involves the conclusion of a contract between the debtor in financial difficulty and the creditors who hold at least 75% of the accepted and undisputed claims. According to the changes brought by *EU Directive no. 2019/1023*, the creditors arrangement procedure can also be opened by creditors, and not only by the debtor.

The voting process on the restructuring plan is similar to the one on the restructuring agreement with the following particularities:

- in order to vote on the restructuring plan, within the same category of claims, one or more subcategories belonging to creditors with common specific interests may be constituted, whose treatment may be different from one subcategory of claims to another;
- in the case of creating sub-categories of claims, the category is considered to have voted for the restructuring plan if the acceptance is achieved by the absolute majority of the value of the claims in that category.

After the vote on the restructuring plan, it must be confirmed by the syndic judge, similar to the restructuring agreement procedure, through a non-contentious procedure.

Also, the closing of the creditors' arrangement procedure is similar to that of the restructuring agreement.

In regard to the judicial reorganization proceedings opened after the beginning of the insolvency procedure, see Section 2.2.

3.2. What are the entry requirements to restructuring and how are restructuring plans approved and implemented?

See Sections 2.2. and 3.1.

3.3. Who has the right to initiate formal restructuring proceedings?

See Sections 2.2. and 3.1.

3.4. What are the consequences of commencing restructuring proceedings, in particular:

3.4.1. Does management continue to operate the business and/or whether the debtor is subject to supervision?

During the insolvency prevention procedures, the debtor's activity is conducted by his own management and supervised by the restructuring administrator/ the administrator of creditors' arrangement.

In regard to the judicial reorganization proceedings opened after the beginning of the insolvency procedure, see Section 2.2.

3.4.2. Does a moratorium or stay apply, and, if so, what is its scope?

The creditors arrangement procedure presented in Section 3.1., provides for a suspension period for the enforcement against the debtor.

According to this measure, from the date of the opening of the procedure, enforcements against the debtor, irrespective of the nature of the claim, shall be suspended by *ex lege* for a period of four months.

The suspension period may be extended for good grounds up to a maximum period of 12 months.

By exception, enforcement of wage claims shall not be suspended; (consequently, during the period of suspension, the limitation period of the right to seek enforcement will also be suspended, and the accrual of interest, late payment penalties, and any other costs relating to the claims affected, up to the date of approval of the plan, will be suspended by operation of law);

3.4.3. How do restructuring proceedings affect existing contracts?

The evolution of the debtor's contracts in the insolvency prevention procedures is dependent on the provisions of the restructuring agreements. Thus, both the performance of contracts, respectively the rights and obligations of the parties can form the subject of negotiation between the debtor and his creditors, the Insolvency Law not providing imperative or prohibitive rules in this regard.

A single exception is provided by the creditors arrangement procedure. Thus, in the case of claims arising before the intervention of the suspension of enforcement procedures (provided in Section 3.4.2.), creditors cannot refuse the performance of ongoing essential contracts, cannot terminate, execute in advance or modify these contracts to the debtor's detriment, exclusively for the non-payment of debts and only if the debtor respects the rest of his obligations from these contracts that reach maturity during the suspension of enforcement. This prohibition remains until the homologation of the restructuring plan.

Therefore, after the negotiation, voting, confirmation, or homologation of the restructuring agreements/restructuring plan, the contracts will be modified according to the will of the parties, to achieve the objectives contained in the restructuring agreement/restructuring plan.

3.4.4. How are existing contracts treated in restructuring and insolvency processes?

See Section 3.4.3.

3.5. Can third-party liabilities be released through restructuring proceedings?

N/A

3.6. Which steps do restructuring proceedings normally include and what are the roles of the courts and other key stakeholders (such as debtor, directors of the debtor, shareholders of the debtor, secured creditors, unsecured creditors, etc.)?

See Section 3.1.

3.7. How are restructuring proceedings normally finalized?

See Section 3.1.

4. Cross-border restructuring and insolvency

4.1. Do domestic courts in your country recognize foreign insolvency or restructuring proceedings over a local debtor?

Yes, the recognition of foreign insolvency or restructuring proceedings operates *ex lege* in case of EU Member States, *Regulation (EU) 2015/848* (Regulation) being applicable.

According to Art. 3 Para. 1 of the Regulation, *the courts of the Member State within the territory of which the center of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings ("main insolvency proceedings")*.

The center of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. In the case of a company or legal person, the place of the registered office shall be presumed to be the center of its main interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member

State within the 3-month period prior to the request for the opening of insolvency proceedings.

Also, according to Art. 3 Para. 2 of the Regulation, *where the center of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.*

Given this, the recognition of the main insolvency proceedings shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings, being governed by the provisions of Chapter III from the Regulation.

In what regards insolvency proceedings and decisions from non-EU Member States, those are governed, from case to case, by particular bilateral treaties with each country rendering such a court decision.

In the case of the absence of such treaties, the Insolvency Law provides, through Title III. Cross-Border Insolvency, a special legal regime for the recognition of foreign insolvency proceedings.

According to this, in addition to other formal conditions regarding the content of the request, competence and the person able to file the request, Art. 289 of the Insolvency Law provides that, in order to obtain the recognition of a foreign decision in Romania, there must be reciprocity regarding the effects of foreign judgments between Romania and the state of the court which pronounced the decision.

4.2. What are the preconditions for recognizing foreign decisions?

The Regulation provides for the immediate recognition of judgments concerning the opening, conduct, and closure of insolvency proceedings that fall within its scope, and of judgments handed down in direct connection with such insolvency proceedings.

Given this, the Regulation provides for automatic recognition of foreign decisions and insolvency proceedings, meaning that the effects attributed to the proceedings by the law of the Member State in which the proceedings were opened extend to all other Member States.

In regard to insolvency-related decisions from non-EU Member States, those are governed, from case to case, by particular bilateral treaties with other countries. In the case of a lack of such treaties, an *exequatur* procedure must be followed.

We have seen in practice forum shopping situations, with debtors opting for example for debtor-friendly jurisdiction. In such cases, it falls with the court handling the specific request to check if indeed the debtor has its COMI within the Member State where the request for main insolvency proceedings has been filed. We have seen both foreign and domestic courts denying such requests where the debtor clearly has not met the COMI standards, already quite clearly defined by the available European case law.

4.3. Do domestic courts cooperate with their counterparts in other jurisdictions and if so, what does such recognition depend on (such as the COMI of the debtor, the governing law of the debt to be compromised, etc.)?

In the European Union, the judicial cooperation between courts in the member states is governed by Art. 42 of the Regulation. The cooperation regards, in particular, but is not limited to, the following:

- coordination in the appointment of insolvency practitioners;
- communication of information by any means considered appropriate by the court;
- coordination of the administration and supervision of the debtor's assets and affairs;
- coordination of the conduct of hearings;
- coordination in the approval of protocols, where necessary.

Additionally, the Regulation also provides through Art. 43 for the cooperation between insolvency practitioners and courts, establishing the following:

- an insolvency practitioner in main insolvency proceedings shall cooperate and communicate with any court before which a request to open secondary insolvency proceedings is pending or which has opened such proceedings;
- an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open main insolvency proceedings is pending or which has opened such proceedings; and
- an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open other territorial or secondary insolvency proceedings is pending or which has opened such proceedings;

In regard to non-EU countries, judicial cooperation, as well as other interstate cooperation, is governed by particular bilateral

treaties with other countries.

4.4. How are foreign creditors treated in restructuring and insolvency proceedings in your jurisdiction?

The Romanian legislation doesn't provide any special regime to foreign creditors. Given this, the Insolvency Law provides the same rights and obligations for the foreign creditors, being treated equally as the domestic creditors.

Also, foreign creditors are treated fairly by the judicial administrator/ syndic judge, without any kind of discrimination compared to domestic creditors.

5. Summary

5.1. Overall, do you have a more creditor-friendly or debtor-friendly restructuring and insolvency regime in your jurisdiction?

Overall, given the evolution of the applicable domestic and international applicable legislation, we deem we have debtor-friendly legislation with increased rights toward the budgetary creditors.

The suspension of the enforcements against the debtor's estate during the creditors' arrangement, the suspension and termination of other claims against the debtor in the insolvency procedure, the judicial administrator's possibility to terminate contracts or to challenge the validity of certain actions/ transactions performed in the past by the debtor are just some of the measures regulated by law for the priority protection of the debtor's interests.

On the other hand, the creditor's interests are not completely neglected, the Insolvency Law recognizes the creditors' existing rights and observes the rank priority of claims, based on a clearly determined and uniformly applicable set of rules and assuring a fair treatment for all creditors of the same rank in order to maximize the creditors' chances for assets leverage and debts recovery.

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