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Legal Bulletin



Banking & Insolvency

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1. Law No. 151 of 18 June 2015 on insolvency proceedings against natural persons

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Law No. 151 of 18 June 2015 on insolvency proceedings against natural persons was published in the Official Journal of Romania, Part I, No. 464/26 June 2015. The law shall come into force on 26 December 2015, except for the provisions on the setting up of the Insolvency Committee, which came into force three days following the date of its publication in the Official Journal of Romania.

The law provides for three insolvency proceedings against natural persons: (i) insolvency proceedings based on a debt reimbursement plan; (ii) judicial insolvency proceedings by liquidation of assets; and (iii) simplified insolvency proceedings. Only the debtors natural persons whose obligations do not arise from the operation of an undertaking by the former mentioned may benefit from the aforesaid insolvency proceedings. The operation of an undertaking by a natural person, within the meaning of Article 3 of the Civil Code, represents the systematic exercise by the latter of an organized activity consisting in the manufacturing, management or alienation of goods, or the provision of services, irrespective of whether this is made for profit or not. Therefore, the subject-matter of the law may not be the insolvency of a freelancer (Romanian “persoană fizică autorizată”). In order to initiate an insolvency proceeding, the following requirements must be met by a natural person:

- His/her domicile, residence or habitual residence has been in Romania¹ for no less than six months before the application;
- He/she is insolvent (it does not hold available funds to pay his/her debts as they fall due) and there is no reasonable probability that, within no more than 12 months,

¹ A person is a habitual resident in Romania if he/she lives permanently in Romania, although he/she did not fulfil all the legal formalities for registration and has assets or obtains revenues in Romania.

he/she becomes capable again to perform his/her obligations as contracted, by maintaining at the same time a reasonable standard of living for himself/herself and the persons dependent on him/her;

- The aggregate value of his/her due obligations is at least equal to the threshold of 15 minimum wages.

The following circumstances shall prevent natural persons to benefit from the legal provisions:

- With less than five years prior to the filing of the new application for the opening of insolvency proceedings, the same person was subject to another insolvency proceedings which were finalized by release from residual debts, or insolvency proceedings were closed for reasons attributable to the debtor;
- The person was convicted definitively for the perpetration of an offence of tax evasion, forgery, or an intentional offence against the estate by breach of trust;
- The person was dismissed within the latest two years prior to the application for the opening of insolvency proceedings, for reasons attributable to him/her;
- The person did not reasonably endeavour to find a job, or unjustifiably refused a proposed job or another profit making activity, although he/she is fit for work and has no other job or other profit making activities;
- The person accrued new debts, with unnecessary expenses, although he/she knew or should have known that he/she is insolvent;
- The person caused or enabled his/her insolvency condition, from gross negligence or wilful misconduct²;
- Another insolvency proceeding is opened on the filing date of the application for opening of insolvency proceedings.

During the insolvency proceedings, the assets required to ensure a reasonable standard of living for the debtor may not be subject to capitalization, such as: (i) assets for personal or household use, which value shall not exceed RON 5,000; (ii) objects of worship, which individual value shall not exceed RON 2,000; (iii) a vehicle amounting up to EUR 5,000, provided that it is indispensable for

² The following actions are presumed to have this effect: (i) during the latest six months prior to the filing of the application for opening of insolvency proceedings, the debtor contracted a debt which represents no less than 25% of the total value of the obligations subject to insolvency proceedings; (ii) during the latest three years prior to the filing of the application, the debtor undertook excessive obligations by reference to his/her financial condition, the advantages to be obtained from the agreement, or all the circumstances that significantly contributed to the debtor's incapacity to pay his/her debts, except for those due to the persons with whom he/she executed such agreement; (iii) the debtor made preferential payments that significantly contributed to the reduction of the amount available for the payment of the other debts, during the latest three years prior to the filing of the application; (iv) the transfer of assets or values out of his/her estate to the estate of another person while he/she knew or should have known that by such transfers he/she is bound to become insolvent; (v) termination of an employment agreement by the parties' consent or by resignation occurring within the latest six months prior to the filing of the application for opening of proceedings.

the debtor and his/her family, inclusively for going to/from the work place, and the cost of its acquisition is not subject to a receivable against the debtor's estate; (iv) the objects necessary to a debtor with disability, or by persons with disability who are dependent on said debtor; or (v) the assets used to exercise the debtor's profession, or the farming inventory, if the debtor works in the farming business.

1. Insolvency proceedings based on a debt reimbursement plan

The insolvency proceedings based on a debt reimbursement plan (the "Plan") entails the following procedural stages:

a) Application for opening of insolvency proceedings

The debtor shall notify to each known creditor of his/her intent to open the proceedings, by whatever means ensuring an acknowledgement of receipt, with no less than 30 days prior to the date of filing of the application. The application shall be filed with the insolvency committee³ (the "Insolvency Committee") and shall contain, *inter alia*, information on: (i) the creditors' identity and the value and type of their receivables; (ii) information on the debtor's assets and revenues; (iii) the debtor's accounts opened with credit institutions or financial investment companies; (iv) receivables held by the debtor, etc.

The application for opening of insolvency proceedings shall bear attached, *inter alia*, the documents attesting to the supplied information and a proposal for a debt reimbursement plan, copies of the tax declarations for the latest three years prior to the filing of the application, and a full report from the Credit Office concerning the debtor's financial standing.

b) Approval as a matter of principle of the application for opening of insolvency proceedings

If the Insolvency Committee deems that the legal requirements regarding the debtor and his/her application are met, it shall issue a decision approving as a matter of principle the application for opening of insolvency proceedings based on a debt reimbursement plan, appoint an interim administrator and, if the case, indicates whether interim measures are required. If the Insolvency Committee establishes that the debtor's financial standing is irremediably compromised and the debtor holds enforceable assets or revenues, only subject to the debtor's consent, it shall refer the matter to the court seeking the opening of judicial insolvency proceedings by liquidation of assets. If it deems that the necessary requirements are met, the Insolvency Committee, subject to the debtor's consent, shall refer the matter to the competent court in order to ascertain the fulfilment of the requirements for the implementation of the simplified insolvency proceedings.

³ The insolvency committee is the central and territorial administrative body set up according to Law No. 151/2015.

Enforcements initiated against the debtor's estate shall be temporarily stayed, *de jure*, on the date of issuance of the decision approving as a matter of principle the application for opening of insolvency proceedings.

c) Service of and challenges to the decision approving the application as a matter of principle

The decision approving as a matter of principle the application for opening of insolvency proceedings shall be served on the debtor, known creditors and the appointed administrator of the proceedings, and shall also be published in the Insolvency Bulletin - under section "Debtors - natural persons with obligations which do not arise from the operation of an undertaking".

The decision approving the application as a matter of principle, or the one rejecting it, may be challenged by the creditors, or the debtor, as the case may be, by a challenge filed with the competent court within seven days from the date the application was served.

d) Table of receivables

In case of approval of the application as a matter of principle, the administrator of the proceedings shall notify the creditors of its appointment, both directly, and by publication in the Insolvency Bulletin ("IB"), and shall request them to provide information on the amount and type of the receivable they hold against the debtor's estate. Creditors shall communicate such information to the administrator of the proceedings within 30 days following the publication of the notice in IB.

The administrator of the proceedings shall prepare the preliminary table of receivables within 60 days following the publication of the notice in IB, and thereafter shall notify it to the creditors and the debtor.

The table may be challenged within seven days following the service date thereof and, within 15 days following the day when the sentence is declared definitive, the administrator of the proceedings shall prepare the final table of receivables which it shall notify to the creditors and the debtor, and shall be submitted to the Insolvency Committee.

Within 30 days following the creditors' notification, the Plan shall be prepared by the debtor together with the administrator of the proceedings⁴.

The ratio of receivables covered by the Plan shall cumulatively meet the following requirements: (i) to be superior to the coverage ratio which could be obtained by the creditors further to judicial insolvency proceedings by liquidation of assets; and (ii) to be superior to the value of the debtor's enforceable assets, value represented as a percentage from the aggregate value of the debtor's enforceable assets and revenues.

⁴ The Plan shall include, inter alia, the following: (i) the reasons which led to insolvency; (ii) the final table of receivables; (iii) ratio of the debtor's salary, or of other income, intended to cover the liabilities; (iv) the list of assets proposed for capitalization in order to cover the liabilities; (v) the list of receivables held by the debtor.

e) Reconciliation and voting of the Plan

The Plan, along with a survey on the feasibility thereof prepared by the Insolvency Committee, shall be notified to the known debtors.

The Plan shall be subject to a 60-day reconciliation procedure during which the debtor and the creditors, assisted by the administrator of the proceedings, shall attempt to reach an agreement. The Plan shall be deemed approved if creditors representing no less than 55% of the aggregate value of the receivables and 30% of the value of the receivables that benefit from a cause of preference vote in favour thereof. The threshold shall not be deemed reached unless said majority would not have been achieved without the vote of the creditors who are relatives of the debtor⁵.

f) Confirmation of the Plan

If the Plan is not approved with the majority indicated above, the debtor may request in court the confirmation of the Plan or the opening of the judicial insolvency proceedings by liquidation of assets. The court may confirm the Plan provided that the following conditions are cumulatively met:

- The debtor is insolvent, his/her financial standing is not irremediably compromised, and the debtor is not prevented by law to benefit from the provisions of Law No. 151/2015;
- The administrator of the proceedings established that the measures proposed by the Plan are fair for creditors and can be achieved by the debtor;
- The Plan was voted by the holders of receivables representing at least the majority of the aggregate value of the receivables;
- The court ascertains that the unfavourable vote of one of the creditors, which, if favourable, the majority requirement would be met, is exclusively grounded on the discontent related to the percentage of recovery of its receivable, while other non-related creditors representing no less than 30% of all the receivables agreed to the proposed Plan; and
- The receivable coverage ratio is superior to the one that could be obtained by the creditors further to judicial insolvency proceedings by liquidation of assets, however no less than 50% of the aggregate value of the receivables and is higher than the percentage representing the value of the debtor's enforceable assets by reference to the total value of the debtor's enforceable assets and revenues.

⁵ Creditors related to the debtor are those having the capacity of: (i) spouse, relative or akin up to the 3rd degree inclusively, a natural person who is residing with the debtor, including the concubine or fiancée or the person who is dependent on him/her routinely; or (ii) the legal entity over which the debtor exercises control.

g) Implementation of the Plan

Throughout the insolvency proceedings based on the Plan, the debtor is bound as follows:

- To make payments to the creditors according to the timeframes set out in the Plan and perform any other measures, as set out in the Plan;
- To communicate to the administrator of the proceedings, on a quarterly basis, a report on the implementation of the Plan;
- To perform a profit making activity or look for a better paid job, or if the debtor lost his/her job for reasons which cannot be attributed to him/her, to reasonably make his/her best efforts to find a job;
- To inform the administrator of the proceedings with regard to any other revenues which are additional to the amount recorded in the Plan, or inheritances or donations the value of which exceeds the minimum wage, and with regard to any reduction in the salary or estimated revenues;
- To refrain from executing, without the consent of the administrator of the proceedings, any deeds of conveyance concerning the enforceable assets.

h) Performance of the Plan

If the Plan was performed, the Insolvency Committee shall ascertain the fulfilment of the measures and payment of the obligations according to the Plan and shall order the closing of the insolvency proceedings based on a debt reimbursement plan. The decision to close the proceedings shall be accompanied by the debtor's application for write-off of residual debts.

2. Judicial insolvency proceedings by liquidation of the debtor's assets

The court shall open these insolvency proceedings in the following cases:

- At the request of the insolvent debtor: 1. if his/her financial standing is irretrievably compromised; 2. if his/her application for opening of insolvency proceedings based on the Plan was rejected by the Insolvency Committee subject to a proposal to open judicial insolvency proceedings by liquidation of assets; 3. if no Plan was approved or confirmed by the court; or 4. if the Plan cannot be accomplished for reasons which are not attributable to the debtor;
- At the request of any creditor, if the Plan cannot be accomplished for reasons which are not attributable to the debtor; or
- At the request of all the creditors, if the Plan was not accomplished for reasons which are attributable to the debtor.

If the court ascertains that the legal requirements are met, it shall pass a sentence to open insolvency proceedings by liquidation of assets, and randomly appoint a liquidator from the insolvency practitioners, bailiffs, attorneys and notaries registered with the List of administrators of

proceedings and liquidators for insolvency proceedings against natural persons. Once the judicial insolvency proceedings by liquidation of assets are opened, the debtor may no longer exercise his/her right of disposal over the enforceable assets and revenues belonging to his/her estate, and the individual enforcements against the debtor's estate are stayed *de jure*, unless the stay is already in place, as a result of the opening of the proceedings based on the Plan.

The liquidator shall prepare the preliminary and final table of receivables if these have not been drafted during the insolvency proceedings based on the Plan, or shall update the table of receivable, inventory and assess the debtor's assets, supervise the progress of the debtor's revenues and expenses throughout the proceedings, and shall sell the assets belonging to the debtor's estate according to Law No. 151/2015.

The order of distribution of the funds resulting further to liquidation is the following:

- Funds resulting from revenues encumbered by causes of preference or from the sale of assets and rights belonging to the debtor's estate, encumbered by causes of preference, shall be distributed to the creditors who are the beneficiaries of such causes of preference after deduction of the procedural expenses and of the expenses advanced by the creditor during the procedure;
- Procedural expenses;
- Receivables representing the amounts owed by the debtor to third parties based on obligations, such as maintenance obligations or the allowance for minors;
- Receivables arising throughout the insolvency proceedings;
- Budgetary receivables;
- Unsecured receivables;
- Subordinated receivables: (i) unsecured receivables of creditors related to the debtor and (ii) receivables arising from gratuitous acts.

The liquidation proceedings are terminated further to the final report and the sentence to close the judicial insolvency proceedings by liquidation of assets.

3. Simplified insolvency proceedings

The simplified insolvency proceedings are applicable if the total amount of the debtor's obligations does not exceed 10 minimum wages, the debtor does not hold enforceable assets or revenues, and he passed the standard retirement age or has lost the entire or at least half of his/her work capacity.

The enforcement measures are stayed *de jure* as of the date when the sentence passed by the court, regarding fulfilment by the debtor of the requirements for the application of the simplified insolvency proceedings, is declared definitive. Within three years following the notice on approval of the application, the debtor shall be bound to: (i) pay the current receivables as they fall due; (ii) refrain from contracting new loans; (iii) annually inform the Insolvency Committee of his/her

financial situation and immediately inform the Insolvency Committee of any inheritances or donations the value of which exceeds the minimum wages, or any revenues additional to the ones declared, which exceed half of the minimum wage.

At the end of the three years, the Insolvency Committee shall decide to cease the application of the simplified insolvency proceedings, and establish the conditions for release from residual debts.

4. Release from residual debts

- a) Release from residual debts in case of compliance with the Plan or the requirements of the simplified insolvency proceedings

Within 60 days following the issuance of the decision to close the proceedings, the debtor may file an application for release from residual debts. If the court ascertains the fulfilment of the legal requirements, it shall order release from residual debts, which consist of the value of the receivables exceeding the coverage ratio agreed within the Plan.

- b) Release from residual debts in case of judicial insolvency proceedings by liquidation of assets

After the closing of judicial insolvency proceedings by liquidation of assets, the debtor shall continue to make payments to creditors, as instructed by the court.

Release from residual debts may be ordered in the following cases:

- One year after the closing date of the proceedings, if the debtor covered at least 50% of the total value of the receivables;
- Three years after the closing date of the proceedings, if the debtor covered at least 40% of the value of the receivables;
- Five years after the closing of the proceedings, if the 40% ratio of the value of the receivables was not covered despite all the efforts made by the debtor.

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