

13 July 2017

Legal Bulletin



Banking & Insolvency

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Rules for the Enforcement of Law No. 151 of 18 June 2015 on the Proceedings for the Insolvency of Individuals

Government Decision No. 419 of 9 June 2017 for the approval of the Methodological Rules for the enforcement of Law No. 151/2015 on the proceedings for the insolvency of individuals (hereinafter called “**GD No. 419/2017**”) was published in the Official Journal of Romania No. 436 of 13 June 2017. The decision will come into force concurrently with Law No. 151/2015 on the insolvency of individuals (hereinafter called “**Law No. 151/2015**”), on 1 August 2017, according to Article 93 of the law¹.

GD No. 419/2017 provides for several rules on the enforcement of Law No. 151/2015, structured in 5 chapters on the following topics:

- General provisions on the proceedings for instituting general criteria to determine the reasonable standard of living;
- Rules on the administrative procedure based on a debt repayment plan;
- The judicial insolvency proceedings by winding up of debtor’s assets;
- Payment of valuers, official receivers and liquidators; and
- Publicity in *Buletinul procedurilor de insolvență* (Insolvency Proceedings Bulletin) at the section “Individuals - debtors with obligations which do not arise from the operation of an enterprise”.

¹ Article 93 of Law No. 151/2015 was amended by Emergency Ordinance No. 98/2016.

1. General provisions on the proceedings for instituting general criteria to determine the reasonable standard of living

According to Article 1 of GD No. 419/2017, the scope of the rules is *“to determine how to apply the provisions of Law No. 151/2015 on the proceedings for the insolvency of individuals, as further amended, hereinafter called the Law, as regards the way of development of conciliation meetings and the way of communicating with the debtor and the creditors, the types of fees for the official receiver and the liquidator, as well as the minimum and maximum amount of such fees”*.

Law No. 151/2015 provides that the Chairman of the Central Insolvency Committee (hereinafter called the **“Central Committee Chairman”**) is in charge with the issuance of a decision providing for the general criteria to determine the reasonable standard of living. The decision must be published annually.

In the enforcement of the aforementioned legal provisions, the rules provide that the decision of the Central Committee Chairman shall be published in the Official Journal of Romania, Part I and on the website of the National Authority for Consumers' Protection.

The reasonable standard of living shall be determined by the central insolvency committee (hereinafter called the **“Central Committee”**) by reference to the following benchmarks provided by GD No. 419/2017:

- Value of the minimum monthly consumer basket;
- Financial particularities, labour market structure;
- Minimum value of professional and/or education expenses;
- Price of utilities, food and basic products;
- Componence and structure of debtor's family, including the persons under the debtor's care, the persons to whom the debtor provides support services and the persons living with the debtor or contributing to the provision of support services;
- The existence of special health, physical integrity situations, disabilities, for the debtor or the persons to whom the debtor provides support services or the person with whom the debtor is living;
- Minimum expenses related to the operation and maintenance of an indispensable vehicle, by reference to the criteria provided at Article 3(2)(c) of Law No. 151/2015² and to the availability and costs of using the public transportation system or an alternative means of transportation and related costs;

² According to Article 3(2)(c) of Law No. 151/2015, a non-enforceable good is the vehicle which is indispensable to the debtor and his/her family, including for driving to/from the place of work, having a value of no more than EUR 5,000 and the cost of which is not a receivable against the debtor's estate.

- Minimum expenses with the upbringing, care and education of the child under the debtor's care or in relation to whom the debtor provides support services, by reference to the child's various stages of development; and
- Minimum requirements of an adequate residence.

After the approval and publication of the criteria, they will be taken into account by the local insolvency committee (hereinafter called the "local committee"), the official receivers and the liquidators in setting the actual level of expenses for ensuring a reasonable standard of living to the debtor undergoing insolvency proceedings.

2. Rules on the administrative proceedings based on a debt repayment plan

GD No. 419/2017 divides the rules applicable to this type of proceedings into 4 sections referring to:

- a) first measures in the proceedings;
- b) conciliation proceedings;
- c) proceedings after the voting of the plan;
- d) official receivers in insolvency proceedings.

a) First measures in the proceedings

At least 30 days before the registration of the application for insolvency proceedings, the debtor must notify his/her creditors on the intention to submit such application.

Upon receipt of debtor's notice, the creditors shall send to the debtor all the necessary data for filling in the insolvency application and shall also make the necessary diligences to reach an agreement with the debtor on debt rescheduling or restructuring³.

The insolvency application shall be filed in writing, using a standard form⁴ and shall be signed and dated in original. Copies of the documents which will be used by the debtor in support of his/her application shall be attached thereto and such copies shall be signed by the debtor as true copies. The application must stipulate the applicable marital property system and must have attached an

³ We note that Article 3 of GD No. 419/2017 provides that the submission of information and the performance of diligences in order to reach the rescheduling agreement may be performed within the 30-day period ranging between the date when the creditors are notified by the debtors and the date of the decision on the admission in principle of the insolvency application. We deem that the period is erroneously provided, given that the notice must be submitted at least 30 days before the date when the insolvency application is submitted, while the application must be examined and the decision must be issued within 30 days as of receipt of the application, according to Article 14(1) of Law No. 151/2015. Given that the examination of the application involves the verification of competence, the actual analysis of the application and the hearing of the debtor, it is obvious that the period between the creditors' notification and the date of issuing the decision on admitting the application is longer than 30 days.

⁴ According to Article 13(7) of Law No. 151/2015, the standard form is approved by the Central Committee Chairman. The committee shall analyse annually whether the form needs to be revised. The document shall be made public, free of charge, at the offices of insolvency committees and online on the website of the central committee.

excerpt from the National Notarial Register of marital property systems, if another system than the system of legal community of property is applicable.

The application may be submitted in person at the committees' offices, by mail using means to ensure acknowledgment of receipt or by e-mail with certified electronic signature. Anonymous or unsigned applications, no matter how they are sent, shall not be taken into account.

The debtor shall be heard within 5 days as of the date when the application is received. If the debtor does not show up and/or not all papers/information have been submitted/communicated, the insolvency committee, in well-grounded cases, shall schedule a new hearing meeting and/or a new deadline for the submission/communication of documents/information.

The committee may schedule several meetings, but it must comply with the 30-day term for the issuance of a decision on the debtor's application.

The debtor shall be informed, whenever the committee orders his/her hearing, on the date, time and place of the meeting by means which ensure acknowledgment of receipt.

Upon drafting the preliminary table of receivables, the official receiver shall proceed to the analysis of the documents provided by the creditors and the debtor and may ask for the support of experts and competent public authorities.

Receivables in foreign currency shall be entered in the preliminary table, at their value in RON at the exchange rate of the National Bank of Romania valid on the insolvency opening date.

As regards the Debt Repayment Plan, GD No. 419/2017 provides that it shall be prepared in accordance with the following criteria:

- The plan must be feasible and identify actual turnaround perspectives by reference to the debtor's possibilities and the applicable circumstances;
- The plan shall include the measures on the house of the debtor's family; if the plan provides for the sale of debtor's house to cover the liabilities and the debtor expresses his/her wish to remain in the house, the insolvency committee shall set the rent by taking into account the debtor's financial possibilities and the value of rent for social housing in the town where the debtor has his/her domicile; and
- The amount proposed to be paid to each creditor must be provided, along with its breakdown per month, payment instalments, measures of debt restructuring, debtor turnaround and arrangement with the creditors.

After the plan is prepared, it shall be sent to the insolvency committee by care of the official receiver and its feasibility shall be verified by the committee within 15 days as of receipt. In the analysis, the committee shall consider at least the debtor's capacity to comply with the plan and the amounts that the debtor deems that it will be able to pay to the creditors.

The outcome of the verification shall be recorded in an assessment report to be submitted to the official receiver. In his turn, the official receiver shall send the report and the repayment plan to the known creditors.

b) Conciliation proceedings

Conciliation proceedings shall be performed in compliance with the good-faith principle, seeking to observe parties' legitimate interests and none of such parties may impose a solution on the other parties.

The meetings shall take place at the office of the official receiver. In agreement with the creditors and the debtor, the official receiver may organize conciliation meetings in other places as well.

The place, date and time of the conciliation meetings shall be determined in compliance with the debtor's and creditors' right to participate in these meetings.

The official receiver shall conduct the meetings, acting in good faith, maintaining a balance between debtor's and creditors' interests. Such official receiver may express points of view or submit proposals to support the forming of parties' agreement, also making sure that the creditors do not put pressure on the debtor.

At the outset of the meeting, the official receiver shall inform the attending persons on the number of creditors that expressed their standing in writing, on their opinions and the debtor's opinions.

The following shall be attached to the minutes: the table of attending creditors and/or the list of creditors that submitted points of view, and certified copies thereof and of the attached documents shall be sent to the debtor and creditors by care of the official receiver.

The creditors may accept the repayment plan in its initial form or may propose amendments. If amendments are proposed, negotiations may be conducted throughout several meetings in order to reach an agreement.

The repayment plan resulting from negotiations shall be submitted to the vote in accordance with Article 28 of Law No. 151/2015. The meeting in which the plan is submitted to the vote shall be held no later than the end of the conciliation period. The conciliation period lasts for 60 days and may be extended by 30 days by decision of the insolvency committee, if there are indications that an agreement is to be reached.

The notice on the date, time and place of the meeting where the repayment plan is to be submitted to the vote shall be sent at least 10 calendar days before the agreed date.

c) Proceedings after the voting of the plan

If the plan was not approved in accordance with Article 28 of Law No. 151/2015, the minutes prepared at the meeting where the repayment plan was submitted to the creditors' approval shall be submitted to the insolvency committee by the official receiver within 3 days as of the vote closing date.

The insolvency committee, in verifying the minutes, within 7 days as of receipt thereof, shall either reject and resend it to the official receiver to resume the vote on the repayment plan or, as the case

may be, to supplement the minutes, or confirm and send it immediately to the debtor, informing the latter that he/she is entitled to ask the competent court to confirm the plan or open insolvency proceedings by winding up of assets.

The debtor may approach the court within 7 days as of receipt of the minutes from the insolvency committee.

If the debtor files for such action before the court, he/she must immediately inform the insolvency committee and the official receiver. Upon the court's request, the insolvency committee shall immediately make available to the court certified true copies of the procedural documents.

If the court rejects the debt repayment plan, it must send *ex officio* the final judgment to the insolvency committee, which, by a decision issued within 10 days as of the date when the final judgment is received, shall divest itself of the debtor's application to open insolvency proceedings on the basis of a repayment plan.

During the performance of the repayment plan, the debtor may contract new loans to solve serious and urgent situations threatening the life of the debtor or the persons in his/her care, only if the official receiver endorses the application and the local committee admits it.

d) Official receivers in insolvency

The local committee shall appoint or, as the case may be, order the replacement of the official receiver by using the list of official receivers and liquidators for the proceedings of insolvency of individuals. The appointment shall be made on a random basis.

If the territorial jurisdiction of the official receiver changes further to the relocation of his/her professional office, he/she shall inform the local committee at least 30 days before relocation. The local committee shall order the random replacement of the official receiver and the former official receiver shall immediately hand over the insolvency file to the designated person.

If the relocation of the professional office does not lead to a change of territorial jurisdiction, the official receiver must inform the committee at least 7 days before the office relocation date.

The official receiver may refuse the appointment for grounded reasons. GD No. 419/2017 gives the following examples of situations which may be taken into account by the Insolvency Committee: health reasons, justified absence from the town where his professional office is located for a period of time long enough to become impossible for him to exercise his duties as official receiver, any case of incompatibility or conflict of interests provided in the specific regulations of relevant professional bodies.

The following are grounded reasons which may lead to the replacement of the official receiver:

- Failure to comply with the deadlines for the performance of procedural acts;
- Failure to comply with the principles of neutrality and good faith;
- Non-compliance or negligent performance of official receiver's duties;

- Suspension of the capacity of member of the professional body in which it is a member or cessation of such capacity; and
- Failure to comply with the obligations incumbent to him under Law No. 151/2015 or under GD No. 419/2017.

Any person entered on the list of official receivers may apply for his suspension or withdrawal from such list. The application shall be submitted to the professional body to which the entered person is a member. Further to the admission of the application, the professional body shall inform the central committee to record the suspension or deregistration from the list. The person whose application was admitted shall inform the local committee in this respect.

The conditions of suspension, withdrawal or re-registration shall be consistently determined by the professional bodies to which the persons registered on the list of official receivers are members.

The professional bodies shall inform the central committee, within no more than 30 days, on any change occurring in the bylaws of their profession and which would have effects on the capacity of official receiver.

In particular, any official receiver must inform the local committee on any change in his status which generates effects on his capacity of official receiver, in order to be replaced.

3. Rules of the judicial insolvency proceedings by winding up of debtor's assets

The rules of such insolvency proceedings are divided into two sections on:

- a) Liquidator's activity and debtor's rights and obligations;**
- b) The supervision period after the judicial insolvency proceedings by winding up of assets.**

a) Liquidator's activity and debtor's rights and obligations

As regards liquidator's activity, GD No. 419/2017 provides that Articles 30 to 32 on replacement rules are also applicable *mutatis mutandis* to liquidators.

The appointed liquidator must inform the court on any change in his status which has effects on his capacity as liquidator, in order to be replaced.

Moreover, each professional body shall inform the central committee within no more than 30 days on any change to the bylaws of the respective profession and which would have effects on the activity of the members of the professional body in their capacity as liquidators.

During the judicial insolvency proceedings by winding up of assets, the debtor may contract new loans, in the same cases as those in the insolvency proceedings with repayment plan, subject to notifying the liquidator and receiving the court's approval.

b) Period of supervision after the judicial insolvency proceedings by winding up of assets

After the insolvency proceedings by winding up of assets is closed, the individual debtor enters the post-proceedings period when he/she continues to make payments to the creditors as per Article 72 of Law No. 151/2015 and his activity is supervised by the local committee.

The local committee shall set up a debtor's file to include the documents prepared in the proceedings by the local committee, the liquidator and the court.

The debt release decision shall be submitted by the debtor to the local committee.

4. Payment of valuers, official receivers and liquidators

Although Chapter IV of GD No. 419/2014 indicates that the rules also cover valuator's fees, such section makes no reference in this respect.

As regards the fees of the official receiver and the liquidator, GD No. 419/2014 provides for an amount from RON 100 to 500, VAT included. The actual fee shall be determined by reference to the complexity of the proceedings.

The fee may be varied if the official receiver or the liquidator is replaced, and the costs with the fees shall be borne from *"the state budget, the budget of the National Authority for Consumers' Protection, through the budget of the Ministry of Economy"*.

5. Publicity via the Insolvency Proceedings Bulletin, section *"Individuals - debtors with obligations which do not arise from the operation of an enterprise"*.

A section is added to the Insolvency Proceedings Bulletin which covers the insolvency of individuals (hereinafter called "BPI Section on individuals") in order to ensure the electronic publicity of the documents which are specific to the insolvency of individuals.

The BPI Section on individuals shall be published electronically at a national level by the National Trade Registry Office (hereinafter called "ONRC"). The documents shall be submitted for publication by the bodies enforcing the proceedings, in electronic form. The proof of publication shall be issued by ONRC.

The service for the publication of procedural documents is free of charge. Access to the BPI Section on individuals is free for the debtor, the official receiver, the liquidator and the creditors as regards the case in which they have such capacity. Insolvency committees and courts of law have free access to all cases.

The persons concerned that do not have any capacity in the case have access to the BPI Section on individuals and may obtain copies thereof or copies of the published documents, against payment, if they account for their interest. The rates are set up by the Minister of Justice, at ONRC's proposal. The persons concerned holding information such as the date of birth or the Personal Number Code of the debtor may obtain, free of charge, information on the proceedings referring to: the identity of

the official receiver or the liquidator, the court, the form of proceedings, the number and date of the insolvency opening and closing decision.

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Editors

Our lawyers specializing in **Banking and Finance Law** provide professional counselling in the regulatory and advisory fields, ranging from bank acquisitions and privatisations to structuring of bilateral, syndicated and other loan facility agreements, including the accessory transaction documentation. The group represents high-profile international and domestic commercial banks, investment banks, leasing companies, insurance companies, and other financial institutions with a presence in Romania or interested to invest in Romania. Since many financings may be part of a larger business transaction, our banking and finance lawyers work closely with lawyers from other practice groups of Țuca Zbârcea & Asociații and are well versed in completing most any kind of transaction with a financing component, including banks privatisation, bankruptcy and restructuring of banks, collateral enforcement and debt recovery, counselling of financial institutions in mergers & acquisitions projects, portfolio transfers and disposal of non-performing loans. Țuca Zbârcea & Asociații's **Restructuring and Insolvency** practice group comprises lawyers specialising in litigation matters associated to insolvency and liquidation, lawyers specialising in financing and corporate matters pertaining to corporate restructuring and reorganisation, out of court procedures and assets/distressed assets recovery, as well as insolvency practitioners. The firm is capable of providing specialised services specific to the judicial administrator under the umbrella of a side-entity called TZA Insolvență S.P.R.L.



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