

THE LAW ON INSOLVENCY OF INDIVIDUALS HAS BEEN PROMULGATED BY THE PRESIDENT OF ROMANIA

On 18 June 2015, the President of Romania promulgated an insolvency law for individuals, which was previously approved by the legal commission of the Chamber of Deputies on 20 May 2015 (the "**Law**").

The Law outlines a legal framework aimed at protecting consumers as good faith borrowers, who have partially repaid outstanding amounts owed under a loan, against uncontrolled growth of loan instalments. While the insolvency of a company is meant to free-up the market from bankrupt companies and provide a rescue mechanism for those companies that can survive, insolvency for individuals offers the possibility for individuals to be released from their debts, provided that they comply with certain mandatory requirements set forth in the Law.

The Law regulates three (3) types of insolvency proceedings:

- *an insolvency proceeding based upon a debt repayment plan* which is a collaborative, collective and egalitarian insolvency proceeding, which proceeding would apply to a *bona fide* good faith individual seeking rehabilitation of their financial situation and for proper management of their income and expenses, in order to cover liabilities as much as possible under a debt repayment plan, followed by a release of any residual debts;
- *an insolvency proceeding by assets liquidation*, applicable when the debtor's financial situation is irretrievably affected and a debt repayment plan cannot be elaborated and implemented; and
- *a simplified insolvency proceeding*.

The Law defines "insolvency" as the state of a debtor's assets characterized by insufficient cash funds to pay debts as they become due. A debtor's insolvency is presumed when a debtor cannot pay their debts within 90 days from the due date thereof to one or more creditors. This presumption of insolvency is rebuttable, meaning that it can be proven otherwise by either the debtor or the creditor(s).

An insolvent debtor may file an application for the initiation of an insolvency proceeding based upon a debt repayment plan, with the insolvency commission as the decision-making and supervisory authority functioning as an administrative body at the local level.

The insolvency commission is also the authority in charge of supervising the simplified insolvency proceeding and it has wide powers of control, guidance and supervision in the post-closing procedure of the insolvency by assets liquidation.

Other bodies involved in the individual insolvency proceedings are the insolvency administrator, the court and the liquidator.

The insolvency administrator is appointed by the insolvency commission via a decision approving (in principle) the opening of the insolvency proceeding based upon a debt repayment plan. The administrator is randomly selected from among the insolvency practitioners, bailiffs, lawyers and notaries public registered with the list of administrators for insolvency proceedings for individuals within the county where the debtor has their domicile or residence.

The duration of the plan is for a maximum of five (5) years, starting from the date of the final decision approving the opening of the insolvency proceeding based upon a debt repayment plan. However, the debtor and their creditors may extend the debt repayment plan for up to 12 months under certain conditions established in the plan.

In order to benefit from the insolvency proceedings regulated by the Law, the debtor must cumulatively fulfil the following general conditions:

- (a) must not have any debts resulting from entrepreneurial activities;
- (b) must have domicile or residence in Romania for at least six (6) months prior to the insolvency filing;
- (c) is insolvent within the meaning of the Law and there is no reasonable probability that the debtor will be able to fulfill their obligations within the following 12 months, while maintaining a reasonable standard of living for themselves and their family members depending upon his/her financial support; and
- (d) the aggregate amount of their debts is equal to at least 15 national minimum wages.

The Law also provides a faster and easier alternative called the "simplified procedure" addressing specific insolvency situations. Under the simplified procedure, the debtor may file an insolvency application provided that:

- (a) they comply with the conditions mentioned in points (a) to (c) above;
- (b) the aggregate amount of their debts is equal to at least 10 national minimum wages;

- (c) they have no income or enforceable assets; and
- (d) they have reached a minimum standard retirement age or their working capacity is reduced entirely or by at least 50%.

The Law details the following scenarios qualifying a debtor as ineligible for the application for the initiation of insolvency proceedings:

- an insolvency proceeding was closed due to reasons imputable to the same debtor within the last five (5) years;
- the debtor was sentenced for an offense of tax evasion, fraud, forgery of deeds or an intentional crime relating to breach of trust, embezzlement;
- the debtor was dismissed in last two (2) years for reasons imputable to them;
- the debtor is capable of working and remains unemployed, having refused an employment offer or other appropriate activities that could generate income;
- the debtor has contracted new debts by luxurious or excessive expenses although they knew or should have known their imminent state of insolvency; and
- the debtor caused or facilitated the insolvency by acting with gross negligence or wilful misconduct.

If an insolvency proceeding by assets liquidation is approved, this has the following effects for debtors and creditor:

- the debtor is no longer entitled to dispose of their enforceable assets and revenues;
- all enforcement procedures are suspended during the insolvency proceeding by assets liquidation, provided that the suspension is not already in effect as a result of an insolvency based upon a debt repayment plan;
- the statute of limitations for creditors to enforce their receivables shall be suspended; and
- any accrual of interest, default interest, or other costs automatically ceases for any existing claims until there is a final decision approving the release of any residual debts.

Insolvency for individuals is intended to be a useful tool that motivates good faith debtors by giving them a chance to rehabilitate themselves financially, by encouraging them to involve themselves in income-generating activities, while keeping

creditors temporarily at bay. The proceedings are transparent and provide creditors with fair chances to recover their outstanding receivables through a repayment plan, which aims at providing a low cost, impartial and objective-based solution for creditors and the debtor alike.

The law on the insolvency of individuals will enter into force within six (6) months following its publication in the Official Gazette.

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