

SIGNIFICANT CHANGES BROUGHT TO THE ROMANIAN INSOLVENCY LEGISLATION BY GOVERNMENT EMERGENCY ORDINANCE NO. 88/2018

On 2 October 2018, the Romanian Official Gazette published Government Emergency Ordinance, ("GEO 88/2018"), for the amendments of certain regulations in the field of insolvency and other legislation.

The normative acts amended by GEO 88/2018 are the following: (i) Law no. 85/2014 regarding procedures to prevent insolvency and insolvency procedures ("Insolvency Law"); (ii) Government Ordinance no. 2/2000 regarding the organisation of activities related to the judicial and extrajudicial technical survey; (iii) Government Emergency Ordinance no. 90/2017 regarding certain fiscal-budget measures, the amendment and the supplementation of normative acts and the prorogation of deadlines; and (iv) Government Emergency ordinance no. 86/2006 on the organisation of the activity conducted by the insolvency practitioners.

Essentially, GEO 88/2018 was adopted because it was deemed necessary to improve the mechanisms for recovering state receivables from insolvent companies and to take measures that would avoid the abusive initiation of insolvency procedures by certain debtors, which use the insolvency mechanisms in order to avoid paying state receivables.

Below you can find a brief presentation of the most significant amendments brought by GEO 88/2018 to the Insolvency Law.

THRESHOLD FOR THE INITIATION OF INSOLVENCY

GEO 88/2016 introduces a threshold above which the application for opening of insolvency proceedings can be submitted by the insolvent company. Hence the company can submit an application for the initiation of insolvency if: (i) it is indebted for more than RON 40,000 (approx. EUR 8,700) to its creditors; and (ii) the value of the receivables held by the company towards the state is less than 50% of the total receivables declared.

CLAIMS FROM THE STATE BUDGET AGAINST THE INSOLVENT COMPANY

Those receivables held by the state budget authorities against the insolvent company will be registered in the table of creditors even if these are acknowledged by a tax decision issued after the initiation of the insolvency procedure, but refer to the activity conducted by the debtor before the initiation of insolvency.

THE SPECIAL ADMINISTRATOR OF THE INSOLVENT COMPANY

It is now prohibited to appoint a person or an entity which is also a creditor of the insolvent company as special administrator of such insolvent company.

NOVELTIES REGARDING DUTIES OF THE JUDICIAL RECEIVER

GEO 88/2018 institutes a new obligation of the official receiver to include in the monthly report information regarding: (i) the compliance with tax duties; (ii) the obtaining or updating of the functioning permits; (iii) decisions/other deeds issued by the control bodies; and (iv) the fee received by the judicial receiver.

Another amendment introduced by GEO 88/2018 in connection with the activity of the judicial receiver refers to the appointment of specialists with whom the receiver can cooperate during the insolvency proceedings. The receiver will not be allowed to appoint specialists which are in a contractual or affiliate relationship with the director of the insolvent company, the liquidator, the insolvent company or any of its creditors.

PAYMENT OF CURRENT RECEIVABLES

GEO 88/2018 imposes a ten (10) day deadline for the judicial receiver to review the requests for payment of current receivables and issue a decision in this regard. If such request is not resolved by the judicial receiver within this deadline and the receivable is not paid within next sixty (60) days, the creditor has the possibility to request the initiation of bankruptcy procedures.

THE REORGANIZATION PLAN

- Could provide the conversion of the state receivables into shares, but only under certain conditions related to the sustainability of this measure and the maximization of the recovery of the state receivable. The state creditor must consent to this measure;
- The state creditor can approve a reduction of its unsecured receivable if such reduction represents the best way for the recovery of the receivables and is a viable measure for the insolvent company.

LIABILITY FOR INSOLVENCY STATUS

It is now explicitly provided that the judicial receiver or the liquidator has the obligation to initiate a claim for patrimonial liability against those persons identified as being responsible for the insolvency state of the company.

This liability claim must be initiated within three (3) years from the date when the person who contributed to the insolvency state became known but no later than the date when the report on the causes of the insolvency are published in the Insolvency Gazette.

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