

New legal framework for insolvency

Government Emergency Ordinance no. 91/2013 regarding the procedures for the prevention of insolvency and insolvency proceedings was published in the Official Gazette no. 620 dated October 4, 2013

Among the considerations which lead to the adoption of the new regulation the preamble of the ordinance mentions the following:

- giving a chance to reorganization to viable enterprises and eliminating the ones seeking only to delay their bankruptcy;
- shortening the duration of the proceedings and strengthening the discipline of the participants to insolvency procedures;
- improving the business climate for turning around distressed businesses and a quicker recovery of receivables.

It is unanimously agreed that some of the measures taken through the new code are designed to provide enhanced protection to creditors against debtors abusing the existing insolvency legislation to clean their debts.

The ordinance gathers into a single regulation most of the aspects related to insolvency, namely: (i) insolvency prevention procedures, (ii) insolvency procedures concerning economic undertakings, groups of companies, credit institutions, insurance and re-insurance companies, (iii) cross-border insolvency aspects, (iv) criminal offences and contraventions etc.

The most visible impact will most likely be on the insolvency procedures concerning ordinary economic undertakings, which have been substantially modified in order to address the aims of the ordinance. Among the important amendments, the following can be mentioned:

- (i) The blockages resulting from the failure of creditors to take a decision can now be eliminated through the decision of the syndic judge, upon request of the official receiver;
- (ii) The rules regarding the calling of the General Meeting of Creditors have been clarified in order to offer more transparency and predictability to the creditors;
- (iii) The suspension of enforcements and of legal actions is now applicable only to receivables prior to the opening of the insolvency procedure; however, receivables arising after the opening of the procedure and which are not paid within 90 days as of maturity can be recovered through lawsuits and enforcement procedures;
- (iv) The judicial reorganization plan can now be adopted under stricter conditions aimed to give more protection to creditors and shortening the duration of the procedure. Among others, a reorganization plan:
 - may be adopted only with the approval of the creditors representing at least 50% from the total value of the receivables;
 - must be achieved within one year as of its entering into force; the term can be extended with up to one year;
 - cannot be voted upon by the creditors affiliated to the insolvent company;

- may grant to the debtor a “haircut” of its debts, however if the plan fails, the liabilities would be reinstated in bankruptcy.
- (v) Any intentional act of the company’s management which has contributed to the company’s insolvency can now trigger the management’s personal liability;
- (vi) Companies of the same group can be subject to a common petition for the opening of the insolvency procedure etc.

The new provisions shall enter into force on 25th October 2013 and shall apply to all proceedings which are pending on that date, except for certain provisions regarding group companies, which would apply only in case of requests filed after its entry into force.