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Legal Brief
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Corporate/ Commercial

Amendment of Law no. 85/2006 on Insolvency Proceedings

Law no. 169/2010 amending and supplementing Law no. 85/2006 on the insolvency proceedings ("**Law 169/2010**"), published in the Official Gazette no. 505 of 21 July 2010.

Law 169/2010 aims to ensure a unitary implementation of the insolvency-related legislation and to guarantee the celerity of the insolvency proceedings.

- *Amendments concerning the creditor's receivables*

  In order to reduce the amount of the applications for the initiation of the insolvency proceedings, Law 169/2010 amends the threshold value of the receivable held by the creditor entitled to request the initiation of the insolvency proceedings from RON 30,000 to RON 45,000. In addition, the receivable has to be certain, liquid and payable for more than 90 days (instead of 30 days, as provided before by Law no. 85/2006).

  As regards the registration of the secured receivables within the receivables' final table, it is established that in case where the capitalization of the secured assets will be done at a higher price than the amount registered with the receivables' final table, the favourable difference will be allocated to the secured creditor, even if a part of its receivable had been registered as unsecured receivable, up to the payment of the principal and related ancillary costs.

- *Amendments with respect to the reorganization plan*

  In this respect, Law 169/2010 sets certain amendments to the former law provisions. Among the most important ones, we outline the following:

  - It is provided the possibility to keep the payment terms provided under the credit or lease agreements of the debtor, even if they exceed the maximum 3-year term set for the performance of the reorganization plan;
  - In order to accelerate the procedure for the approval of the reorganization plan, the stage of the syndic judge's approval in principle was eliminated;
  - It was inserted the possibility of giving the debtor's assets in payment to the creditors, in exchange for the receivables they hold to the debtor's possessions, with the prior condition for obtaining the creditors' written approval.

- Law 169/2010 inserts the possibility of amending the reorganization plan at any point throughout the proceedings, in compliance with the approval conditions provided under Law no. 85/2006. If the initiative to amend the plan belongs to the debtor, the prior approval of the general meeting of the debtor's shareholder shall be required.

- The new regulation defines the undisadvantaged receivables as being those receivables which will be fully paid within 30 days as of the confirmation of the plan or in accordance with the credit or leasing agreements they result from.

- *Reduction of the procedural terms*

  For the purpose of shortening the terms during the insolvency procedure and ensuring celerity of the same, many of the changes brought by Law 169/2010 consider the reduction of the procedural terms for the settlement of various claims, objections and second appeals by the court. Please find below some of these modifications:

  - Reduction of the term for filing the second appeal against the decision of the syndic- judge from 10 days to 7 days as of the communication of the decision, respectively the hearing date of the second appeal from 30 days to 10 days as of the registration of the file with the court of appeal;

  - Reduction of the observation period the debtor may be subject to within the simplified procedure from maximum 60 days to maximum 50 days;

  - Reduction of the term within which the creditors may file an opposition to the debtor's request to open the insolvency proceedings from 15 days to 10 days as of the receipt of the notification from the judicial administrator/liquidator;

  - Reduction of the deadline for the registration of the petitions for admitting creditors' receivables with the debtor's amount of claims from maximum 60 days to maximum 45 days as of the opening of the procedure.

- *The term for grounding the decisions of the syndic-judge*

  The term for grounding the decisions awarded by the syndic-judge is expressly regulated, respectively 10 days as of the awarding of decision.

- *The deadline for the debtor to file its petition for opening the insolvency proceedings in case of having the good-faith extrajudicial negotiations for the restructuring of its debts failed*

  In accordance with the new provisions, if upon the expiry of the mandatory term to declare the insolvency state (i.e. 30 days from the occurrence of the insolvency state), the debtor is involved in good-faith extrajudicial negotiations with the creditor in order to have its debts rescheduled, the latter shall have the obligation to file an application with the court to fall under the provisions of Law no. 85/2006, within 5 days from the failure of negotiations. Same terms shall have to be complied with when the insolvency state of the debtor occurs throughout the negotiations held upon the proceedings regulated by Law no. 381/2009 on the implementation of the preventive composition and ad-hoc mandate, even if serious indications point to the fact that the results of negotiations could be achieved in short time by the conclusion of an extrajudicial agreement.

- *Suspension of the claims for covering the receivables toward the debtor*

  Law 169/2010 expressly regulates the fact that as of the opening of insolvency proceedings against the debtor all the judicial, extrajudicial or forced execution measures, for covering the receivables towards the debtor and its assets are suspended, irrespective of the stage of jurisdiction of the respective actions.

- *Liability of the management bodies' members*

  According to the last amendments, the application to engage the liability of the management bodies' members shall form the object of a file separate from the merits file. Should a decision denying such action be issued, the official liquidator not intending to file a final appeal against it shall notify the creditors of its intention. If the general meeting or creditor holding more than half of all receivables decides that a final appeal has to be filed, the official receiver shall have to prepare the legal redress.

Banking

Application of international accounting standards

Order no. 9/2010 issued by the national Bank of Romania regarding the application of the International Financial Reporting Standards (IFRSs) by the credit institutions, as basis of accounting and for the preparation of annual individual financial statements, starting with 2012 financial year was published in Official Gazette Part I, no. 535 of July 30, 2010 (the „**NBR Order 9/2010**").

The NBR Order 9/2010 applies to all credit institutions carrying out activities in Romania, including Romanian branches of foreign credit institutions.

Under the said Order, starting with January 1, 2012, accounting records will be maintained in accordance with the accounting treatments prescribed by the IFRSs in accordance with the Regulation (EC) no. 1606/2002 on the application of international accounting standards. Therefore, as of January 1, 2012, credit institutions shall maintain the accounting records in accordance with the Accounting Law no. 82/1991, the IFRSs, the regulations issued by the National Bank of Romania for the application of the NBR Order 9/2010 and other relevant laws.

The regulations to be issued by the National Bank of Romania will mainly set out: the rules for pointing out the economic-financial operations in accordance with IFRSs, the preparation, the approval, auditing, filling and publication of annual financial statements, the charts of accounts and the content of accounts, as well as the correspondence with the chart of accounts currently used by credit institutions and the provisions regarding the accounting documents, forms and norms related to their preparation and use.

According to NBR Order 9/2010, starting with January 1, 2010, all credit institutions, except for Romanian branches of foreign credit institutions and foreign branches of Romanian credit institutions, must prepare and publish financial statements in accordance with IFRSs in local currency and in Romanian language.

The persons in charge with the administration and/ or management of credit institutions, economic directors, the accountants or any other such persons are responsible for applying the provisions of the NBR Order 9/2010.

Under the said Order, the annual individual financial statements prepared in accordance with IFRSs will be audited and submitted to NBR within the term provided by the legislation in force.

The objectives to be met for the implementation of IFRSs are attached as Appendix to the NBR Order 9/2010.

Deposit Guarantee Fund related regulation

The Regulation no. 5/2010 issued by the Deposit Guarantee Fund (the "DGF") for the amendment and supplementation of DGF Regulation no. 3/2009 regarding the transmission to the said fund of deposits in the banking system of the status of the secured depositors was published in the Official Gazette, Part I, no. 583 of August 17, 2010 (the "**DGF Regulation 5/2010**"). The DGF Regulation 5/2010 came into effect on its publication in the Official Gazette.

Among the amendments brought by the DGF Regulation 5/2010, please note the following:

- the supplementation of certain provisions, such as articles 1 and 3(1) in order to reflect that the said regulation sets forth the manner the data regarding the status of the secured depositors is being kept, besides the manner in which the data are transmitted to DGF;
- the obligation for the credit institution to prepare the required data within 3 days as of the end of each semester; note that for 2010, the deadline for preparing the reports is 20 days as of the end of the semester;
- the obligation for the credit institution to submit to DGF the required data within 3 days as of the receipt of the DGF's request in this respect;
- the obligation for the credit institutions to submit the required data to DGF through the reporting system of the National Bank of Romania (SIRBNR).

Calculation of the minimum capital requirements for operational risks of credit institutions and investment firms

The NBR-NSC Regulation no. 9/13/2010 for the amendment and supplementation of the NBR-NSC Regulation no. 24/29/2006 regarding the calculation of the minimum capital requirements for operational risks of credit institutions and investment firms was approved by NBR Order no. 8/2010 and also by NSC Order no. 48/2010 which were published in the Official Gazette, Part I, no. 547 of August 8, 2010.

Among the amendments brought by the NBR -NSC Regulation no. 9/13/2010, note the possibility to allocate the loss related events affecting the entire entity to an additional activity line "corporate events" due to exceptional circumstances. This provision shall come into effect starting with December 31, 2010.

Real Estate and Construction

Substantial modification of the Law on cadastre and real estate publicity

Law no. 7/1996 on Cadastre and Real Estate Publicity ("**Law no. 7/1996**") was amended and completed by Emergency Government Ordinance no. 64/2010 (published in the Official Gazette, Part I, no. 451 of 2 July 2010) and by Law no. 170/2010 (published in the Official Gazette, Part I, no. 507 of 21 July 2010).

The amendments create the National Programme for Registration of Real Estate Properties, and also modify and detail the procedure for realisation of the cadastral works and the registration with the land book of the real estate properties, as a result of Romania's international commitments to accelerate ex officio achievement of these operations at national level.

Law no. 7/1996 now clearly stipulates possibility to register with the land book the possession of a real estate property (should the owner be unknown), as well as to open land books for properties with both owner and possessor unknown. It also introduces the concept of cadastral sector, being an area determined by linear elements persistent in time like roads, waters, channels, dams, railways).

After opening of the new land books within each cadastral sector, all the existing cadastral and real estate publicity documents and registers will be replaced with the new plans and land books. Beneficiaries of charges mentioned in the old transcription registers (in Romanian "*registru de transcriptiuni si inscriptiuni*") will have to ask registration of such mentions in the new land books. Also, no later than 31 December 2014, all the owners of real estate rights registered in the old transcription registers, as well as in certain old local real estate publicity systems listed by Law no. 7/1996, have to ask opening of the new land books, under sanction of losing opposability of their rights.

In the areas where the old land book system of Decree-Law no. 115/1938 is in place, Law no. 7/1996 now expressly requires realisation of a new cadastral documentation in the following cases: (i) registration of plots resulting from joining (in Romanian "*alipire*") and dismemberment of properties registered with the old land books, (ii) registration of constructions built on plots of land registered with the old land books, and (iii) registration of properties obtained based on the land restitution laws.

Other significant modifications include:

- Availability of notation in the third part of the land book is extended to the deeds for concession, administration, assignments of receivables, as well as all lease agreements, regardless of their duration (until now, only the lease agreements concluded for more than 3 years were subject to notation);

- Joining of several adjacent properties can be done only by authentic deed (requirement already implemented in practice of the land book offices, however without being expressly provided for by law);

- Upon registration with the land book, the name of the owner has now to be accompanied by an additional identification, be it the personal numerical code (in Romanian "cod numeric personal") or the fiscal registration/identification code);

- Challenge of the land book registration decision is no longer made directly to the court, but has to be preceded by a re-examination request made to the issuing authority (the cadastral and land book office) within 15 days from communication of such decision. The decision upon the re-examination request can in turn be challenged before the local court. The cadastral and land book office will not be part in the court proceedings (solution consecrated already in practice by a decision of the High Court of Cassation and Justice issued in 2007);

- As a rule, registration of the ownership right over a construction can be made only based on the building permit, the reception minutes at termination of works and a cadastral documentation. By exception, in case of constructions made before coming into force of Law no. 453/2001 (31 August 2001), the reception minutes are not necessary, while the building permit can be replaced by a certificate issued by the mayor of the locality where the construction is located, attesting that the respective building is registered in the agricultural register (in Romanian "registru agricol") and in the fiscal evidences. The former language of Law no. 7/1996 allowed registration based on a certificate issued by the mayor of the locality where the construction is located, attesting that the respective building was made in accordance with the building permit;

- **Law no. 7/1996 introduces the possibility to terminate the forced and perpetual co-ownership over common spaces of a building containing also spaces individually owned (e.g. blocks of apartments).** Following a positive decision (to be adopted by a majority of 2/3 of the owners in the building), the forced ownership will be converted into a normal, temporary co-ownership. Subsequent termination of such normal co-ownership is also allowed to be decided by the same quorum of 2/3 of the owners in the building (by derogation from the rules of normal co-ownership, which require unanimity for such a decision). In both cases, the owners which did not vote, or voted against the termination of co-ownership, are entitled to a fair compensation, to be amiably agreed upon or, in case of disagreement, determined by the courts of justice.

As a result of this modification, Article 101 in House Law no. 114/1996 was also modified, by removing the part of the mentioned article providing that forced and perpetual co-ownership right over common spaces in a building can be disposed of only together with the exclusive ownership right over the building or of a determined part of it.

Modifications to methodological norms for the Construction Law

Order no. 1867/2010 of the Ministry of Regional Development and Tourism for modification and completion of the methodological norms for application of the Law no. 50/1991 on authorisation of building works (published in the Official Gazette, Part I, no. 534 of 30 July 2010).

In respect of the construction works to be executed upon buildings located within protection areas of monuments or within protected built areas, or upon constructions of significant architectural or historical value, existence of a legally approved urban planning documentation is not necessary for issuance of the building permit for interior fit-out or rehabilitation works, if the intended works will not modify the facades of the construction.

The order also clarifies the procedure for issuance of the building permits whose coverage is extended over the limits of an administrative-territorial unit ("**ATU**") or a district of Bucharest.

Another novelty introduced by the order is that for investments to be placed under the procedure of environmental impact assessment and/or appropriate assessment (in Romanian "*procedura de evaluare adecvata*"), the environmental impact assessment can no longer be made after commencement of the building works or after the realization of the investment.

Modifications to the land restitution laws

Law no. 158/2010 for modification of Article 26 in Land Law no. 18/1991 (published in the Official Gazette, Part I, no. 496 of 19 July 2010).

In accordance with Law no. 158/2010, *intra muros* plots of land belonging to persons who died without heirs remain at the disposal of local public authorities and pass into public ownership of the respective administrative-territorial unit and in the administration of the respective local councils, based on the certificate of heirless inheritance issued by the public notary. In this respect, within 30 days from the date of the owner's death, the secretary of the respective administrative-territorial unit has the obligation to communicate the situation to the Notaries' Chamber, in order for the inheritance proceedings debate to be initiated. The change of the legal regime of public ownership into private ownership is prohibited and sanctioned by law with absolute nullity. The former language of Article 26 of the Land Law no. 18/1991 ("**Law no. 18/1991**") stipulates that the respective plots remain at the disposal of local public authorities in order to be sold, attributed into concession or for use to persons intending to build lodging but lacking the necessary land, or to be used for other destinations mentioned by Law no. 18/1991.

Law no. 160/2010 for completion of Article 23 in Law no. 1/2000 for reinstatement of ownership right over agricultural and forest plots of land requested in accordance with provisions of Land Law no. 18/1991 and Law no. 169/1997 (published in the Official Gazette, Part I, no. 497 of 19 July 2010).

The new paragraph introduced by Law no. 160/2010 in Article 23 of Law no. 1/2000 allows any administrative-territorial unit (cities, communes, counties) to apply for restitution of the entire surface of agricultural land owned by the respective ATU in 1945. Such application can be made within 60 days from entering into force of Law no. 160/2010.

Various other acts with impact on the activity of cadastral and real estate publicity

Cooperation Protocol no. 429312/1404 dated 26 April 2010 between the National Agency for Cadastre and Real Estate Publicity and the National Union of Public Notaries regarding conduct of real estate publicity operations, in application of Law no. 7/1996 on Cadastre and Real Estate Publicity no. 7/1996 ("Law no. 7/1996"), republished, as amended and completed (published in the Official Gazette, Part I, no. 475 of 9 July 2010).

The new cooperation protocol between the public authority for cadastre and real estate publicity and the National Union of Public Notaries replaces implicitly the former protocol concluded between the same parties in December 2004. The new protocol has the same structure as the old one, but its content is updated to the current form of Law no. 7/1996.

Similar with the old form, the provisions of the protocol stipulate that the ownership right and other real estate rights, including rights arising from inheritance, will be registered in the Land Book only on the base of transmission, constitution, modification or extinction deeds **concluded in an authentic form or issued by a public authority**, with the exception of the rights ceasing to exist due to the owner's death or the expiry of time for which they were registered.

Order no. 176/2010 of the Ministry of Administration and Internal Affairs for modification and completion of Order no. 39/2009 of the same authority (published in the Official Gazette, Part I, no. 572 of 12 August 2010).

The order amends and completes certain aspects in Order no. 39/2009 regarding approval of tariffs for the services provided by the National Agency for Cadastre and Real Estate Publicity Registration and its subordinate units (e.g. fees for the accelerated administrative procedure).

Competition

New amendments to the Competition Law

On August 05, 2010 Emergency Government Ordinance no. 75/2010 (the "**EGO no. 75/2010**") came into force, amending Competition Law no. 21/1996 ("Competition Law").

The amendments made to the Competition Law are meant to further align the national legislation with the regulations and practice of the European Commission. The amended Competition Law makes it possible for the Competition Council to intervene more promptly and more specifically in case of anticompetitive practices.

One significant amendment refers to the market share thresholds for the application of Art. 5 (1) of the Competition Law, increasing from 5% to 10% for the combined market share of the undertakings on any the relevant markets, when the undertakings are competitors, and from 10% to 15% on any of the relevant markets when the concerned undertakings are non-competitors. If determining whether the agreement is made between competitors or non-competitors proves difficult, then the 10% threshold shall apply.

Also, the method of calculating the authorization fee for economic concentrations has been simplified, representing 0.04% of the total turnover achieved in Romania, and no more than EUR 100,000 (equivalent in RON). In the previous form of the Competition Law the authorization fee represented 0.1% of the aggregate turnover of the economic agents that gained control over a target company (solely or jointly), plus the turnover of the companies in the group, plus the turnover of the target company, all of them on the relevant market on which the economical concentration is taking place.

The Competition Council published the Instructions on the calculating of the fee, so that, the fee is now calculated regardless of the market affected by the concentration, taking into consideration the total turnover on the Romanian market.

Significant amendments are introduced by EGO no. 75/2010 with regards to the possibility of investigated companies to make commitments concerning the practices that make the object of the investigation, in order to remedy the situation which leads to such investigation. If the Competition Council intends to accept such commitments made by the investigated company, it shall publish a brief of the case and the basic content of the commitments, upon which interested third parties may present observations. The Competition Council may enforce the commitments by issuing a decision.

Pursuant to the amended Competition Law, even newly established undertakings (that did not record any turnover for the year preceding that of the sanctioning) may receive fines from RON 20,000 up to RON 2,000,000, or RON 30,000 up to RON 5,000,000, depending on the type of infringement. Also, under the present amendments, in certain circumstances, if the undertakings expressly admit to having committed an infringement, they may benefit from a reduction of 10% to 25% of the basic level of the fine.

Another novelty introduced by the amended Competition Law refers to the possibility of contesting a decision of the Competition Council. In this case, the suspension of the enforcement of the respective decision is subject to the payment of a bail, amounting to 30% of the fine imposed through the decision.

As a result of the amendments to the Competition Law, the Competition Council issued a number of regulations to ensure an appropriate application of the amended Competition Law.

Employment & Social Security Law

New professional occupations recognized by the Romanian Classification of Occupations

Order no. 453/2010 of the Ministry of Labour, Family and Social Protection amending the Classification of Occupations in Romania was published in the Official Gazette no. 447/01.07.2010.

The above-mentioned order supplements the list of professional occupations officially recognized in the Classification of Occupations in Romania with new occupations including the following: risk manager, credit analyst, financial auditor, social responsibility auditor, school counsellor, e-learning developer, poligraph expert, building manager, social responsibility manager, school psychologist.

A small number of formerly recognized occupations are re-denominated or re-codified.

Dispute Resolution

Civil and Criminal Procedure Codes

Laws on Civil and Criminal Procedure Codes were published in the Official Gazette of Romania on July 15.

The **New Civil Procedure Code** published in the Official Gazette, Part I, No. 485 (Law no. 134/2010) will entry into force upon the date which shall be further provided under the law on the implementation of Civil Procedure Code, which shall be presented by the Government before the Parliament for approval within 6 months from its publication in the Official Gazette.

The dispositions of the New Civil Procedure Code aim to provide a uniform, modern regulation responsive to individual's expectations, but also to other actors involved in the administration of the act of justice (judges, lawyers etc.).

The provisions of the New Code differ substantially from the current regulations bringing new institutions and procedures. Among these modifications we mention:

- Some important amendments refer to the jurisdiction of the courts: unification of civil and commercial jurisdictions, unification of the jurisdiction to settle non-monetary claims and others.
- Another novelty refers to evidences legal regime which shall include: electronic documents, photographs, photocopies, disks etc.
- The incompatibility of the judge who settled the case in the first instance, second appeal or final appeal, with the settlement of the same case by revision, challenge for annulment or after being referred for retrial.
- The requirement for a litigation to have as object monetary rights in case of arbitration has been removed.

- The term to file the (final) appeal against a court decision has been extended to 30 days**.**

- The final appeal will be under the jurisdiction of the High Court of Cassation and Justice unless the law provides the jurisdiction of a higher court.

- The New Code contains provisions that ensure an expeditious civil court case: the case shall be provided for retrial only once, the regulation of a simplified special procedure in relation to the claims at an amount of less than 10,000 RON.

- The New Civil Procedure Code unifies previous regulations contained in various enactments, e.g. the procedural norms

Law no.135/2010 on Criminal Procedure Code was published in the Official Gazette, Part I, No. 486 of 15 July 2010.

The **New Criminal Procedure Code** shall enter into force on the date established by the law on its implementation. Within 12 months after the publication of the Code in the Official Gazette, the Government shall present the bill on the implementation of the Criminal Procedure Code before the Parliament for approval purposes.

The provisions of the New Criminal Procedure Code aim to reduce duration of the trials, to simplify criminal procedures by introduction of new institutions; create a unitary jurisprudence on national level in accordance with the international standards and requirements of European Court of Human Rights. Some of the most important changes are as follows:

- Several new principles are introduced under the new Criminal Procedure Code; one of them is the separation of judicial competences. According to this principle, four judicial functions are being exercised during criminal court proceedings: criminal prosecution (by criminal investigations bodies and prosecutor); disposition over fundamental rights and freedoms in the course of criminal prosecution (by the judge of rights and freedoms); examination of the legal character of initiation/non-initiation of criminal prosecution (by preliminary chamber procedure), judgment (by the courts of law).

- The criminal judicial procedures are simplified, new institutions being introduced: the agreement on guilt acknowledgement, harmonization of current evidence with the European relevant standards, regulation of final appeal in cassation as extraordinary appeal.

- The Criminal Procedure Code introduces the institution of the judge of rights and freedoms, competent to rule on preventive, prejudgment measures, provisional security measures, prosecutor's acts, approval of searches etc.

- The Criminal Procedure Code introduces the institution of the preliminary chamber judge, competent to verify the legality of the prosecutor's decision to proceed with the criminal prosecution. The following preventive measures are regulated by the Code: preventive arrest, house arrest (for the first time regulated by the Romanian Law), judicial control on bail, judicial control, detention.

- The accused person is substituted with the suspect person (the person reasonably presumed to have committed a deed under the criminal law) which has all the legal rights of the defendant.

- The institution of the final appeal is no longer regulated by the Criminal Procedure Code. It introduces extraordinary appeals and the final appeal in cassation aiming to vest the High Court of Cassation and Justice to rule on the compliance of challenged decision with the law. The revision of decisions given by the European Court of Human Rights is another extraordinary appeal.

- If a court of justice finds during the proceedings that a legal issue, on which the settlement of the case is based, was interpreted distinctly by the case law, it may request the High Court of cassation and Justice to issue a prior decision for the settlement of the legal issue.

- The agreement of guilt acknowledgement is a new institution which shall be only applicable to the crimes for which the law provides the punishment by fine or by maximum 7-year prison sentence. The agreement on guilt acknowledgement may be concluded between defendant and prosecutor in the course of criminal prosecution, further to the proceeding with the criminal prosecution.

- The New Criminal Procedure Code introduces and details the procedure on criminal liability of legal entities.

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