

Insolvency of Companies in Romania

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Abstract

The purpose of the paper is to analyze the main aspects regarding the insolvency of companies in Romania. The main objectives considered were the theoretical presentation of the concept of insolvency, the principles of insolvency, legislative regulations, the report of the judicial liquidator. In the case study presented for the company X SRL, we presented some accounting records, the statement of payments and receipts, as well as information related to the liquidation balance sheet.

Key words: insolvency, debtors, liquidation balance sheet, payments, reorganization

J.E.L. classification: M41, Q40, Q56

1. Introduction

Insolvency is a state of a debtor's patrimony that is characterized by insufficient funds available to pay debts.

At the level of Romania, the National Office of the Trade Register publishes in electLeiiic format the Bulletin of Insolvency Procedures. It ensures the service of subpoenaing parties, communication, summons, notification of procedural documents issued by courts and judicial administrators/liquidators in the context of insolvency proceedings.

The insolvency proceedings bulletin contains all the procedural documents issued by the courts and the judicial administrators/liquidators in the course of the insolvency proceedings of legal entities, namely: summonses; communications; Notifications; summonses; court decisions; other procedural documents provided by law (reports issued by the administrator/judicial liquidator, judicial reorganization plans, announcements).

The publication of the Insolvency Procedures Bulletin brings clear benefits:

- accelerates the insolvency procedure and simplifies the communication of subpoenas, summonses, notices, court decisions and other procedural documents issued by courts and judicial administrators/liquidators, thus establishing an electLeiiic communication procedure.
- unifies and standardizes procedural documents issued by courts and judicial administrators/liquidators.
- contribute to the development of a national database of procedural documents issued by courts and judicial administrators/liquidators (namely subpoenas, communications, court orders, summonses, notices, reports, reorganization plans)
- facilitates quick registration in the trade register / other registers with regard to insolvency mentions which are provided by Law no. 85/2014 on insolvency prevention and insolvency procedures to be registered in the register.
- provides interested persons access to procedural documents issued by courts and judicial administrators/liquidators (<https://e-justice.europa.eu/>).

According to a study carried out by HotNews, the number of Romanian companies in financial difficulty increased by over 30,000 in the last 2 years, problems being in the field of trade, distribution and construction.

2. Theoretical background

The specialized literature in the field of insolvency has published numerous studies over time, some of which we will stop in the following.

Insolvency means the inability to pay one's debts or collect one's obligations (Rochon M., et.all, 2017. p.22).

According to a study by Bates and Pavel (2019), "insolvency risk is a vast field of study, investigated for over 50 years. The promoter of the studies is considered to be the researcher Edward I. Altman, who used statistical methods as a basis for investigating the risk of insolvency, his activity being developed and later used in other researches (Balteş N., et. al, 2019, p.58).

According to lawyer Sandu (2023), the state of difficulty is a state generated by any circumstance, which causes a temporary impairment of the activity that gives rise to a real and serious threat to the debtor's future ability to pay his debts when due, if no appropriate action is taken (Sandu F., 2023, p. 84).

Insolvency practitioners are, for example, obliged to communicate relevant information to the insolvency practitioners of other group members and to analyze whether there are possibilities to coordinate the insolvency proceedings of the group members (Pepels S., 2020, p. 97).

According to Barton and Taylor (2020), "insolvency can affect a trust structure in a number of ways, some more directly than others. Consider the case of a judgment creditor who may have spent two or three years in litigation against an apparently wealthy individual before obtaining a substantial money judgment. The debtor pleads personal poverty. Their apparent wealth is in fact that of a trust that they settled some years previously" (Barton Z., et al, 2020, p. 445).

A study by Pindado and Rodrigues (2004) deals with the problem of insolvency on a diagnostic basis. It has been shown that in small companies, the relevant information for the preventive diagnosis of insolvency can be synthesized in a model built with a smaller number of economic and financial reports(Pindado J., et. al, 2004, p. 51).

In the insolvency of a group of companies, it clearly makes more sense to find substantive group insolvency rules that are able to prevent the insolvency of all group members, rather than to optimize jurisdictional rules, leading to or at least not prevents insolvency of all group members (Siemon K, et. al, 2013, p. 61).

In all legal systems, the most traditional device for addressing the problem of insolvent debtors consists in collecting the debtor's assets, selling them on the given market and distributing the proceedings among the claimants in proportion to their credits (Martino P., et al, 2010, p. 139).

The legal basis in Romania regarding insolvency is Law no. 85/2014 on insolvency prevention and insolvency procedures, with subsequent amendments and additions. According to art. 2 of law no. 85/2014, the purpose of this law is to establish insolvency prevention procedures that debtors in difficulty can resort to and, respectively, collective insolvency procedures to cover the debtor's liabilities, in which the debtor benefits, when possible, of the chance to recover his activity.

Law 216 of July 14, 2022 amends and supplements Law 85/2014 on insolvency prevention and insolvency procedures and transposes the business prevention mechanisms introduced at European level by Directive no. 2019/1023. Through the amendments to the insolvency law, the business prevention mechanisms imposed by Directive no. 2019/1023 and certain concepts and methods of action that were up to this point left to the discretion of the parties or different interpretations by the courts are clarified.

The amendments brought to the Insolvency Law by this normative act aim at:

A. Introduction of the early warning procedure:

- professionals are alerted by the fiscal body regarding the non-execution of certain obligations and information is made available to them free of charge regarding the recovery solutions provided for by law through a website (Law no. 216//2022, art. 5¹).

- alert notifications are sent automatically through the electLeic communication system developed by the Ministry of Finance/National Fiscal Administration Agency in relation to non-execution of obligations to the state budget, to the state social insurance budget or to the unemployment insurance budget. The procedure for communicating alert notifications, including the amount of outstanding obligations that trigger the issuance of the alert message, by categories of debtors established according to fiscal legislation, the date of issuance of the first alert message and,

if applicable, the frequency of the alert message and its format, is approved under the provisions of Law no. 207/2015 regarding the Fiscal Procedure Code, with subsequent amendments and additions (Law no. 216//2022, art. 5²).

B. Another change concerns the insolvency prevention procedure:

If an insolvency prevention procedure resulted in a definitive discharge of obligations, the debtor cannot access another insolvency prevention procedure within a period of 12 months from the date of closure of that procedure.

The debtor cannot access an insolvency prevention procedure who, in the last 3 years prior to submitting the request for confirmation of the restructuring agreement or the request to open the composition procedure, has been definitively convicted for committing an intentional crime against patrimony, corruption, service, forgery, for the crimes provided by the Companies Law no. 31/1990, republished, with subsequent amendments and additions, Law no. 129/2019 for the prevention and combating of money laundering and the financing of terrorism, as well as for the amendment and completion of some normative acts, with subsequent amendments and additions, Law no. 227/2015 regarding the Fiscal Code, with subsequent amendments and additions, Law no. 241/2005 for preventing and combating tax evasion, with subsequent amendments and additions, Competition Law no. 21/1996, republished, with subsequent amendments and additions, as well as for the crimes provided for in art. 240 and 241 of Law no. 286/2009 regarding the Criminal Code, with subsequent amendments and additions.

The debtor retains his right of administration under the conditions of common law. The individual and collective rights of employees, including the rights to information and consultation, provided for by law or collective labor contracts, are not affected by the procedures provided for in this title. In case of subsequent insolvency of the debtor, the new financing provided in the restructuring agreement or in the restructuring plan, as well as the intermediate ones, cannot be canceled unless it is proven that they are fraudulent.

After the confirmation of the restructuring agreement and until the closure of the procedure, the debtor will not be able to access another insolvency prevention procedure.

After the confirmation of the restructuring agreement and until the closure of the procedure, the insolvency procedure against the debtor cannot be opened at the request of an affected creditor.

For a period of 3 years after confirmation, quarterly, the restructuring administrator will monitor the implementation of the agreement, even if the period provided for its execution is longer.

If the period of the agreement is less than 3 years, then the monitoring period is reduced to its period. If the confirmed agreement provides for debt reductions, any taxes owed by the debtor become due on the date of the publication of a decision by the syndical judge confirming the fulfillment of the agreement.

The procedure of the restructuring agreement ends with the publication of a decision to close the procedure by the syndical judge, in a closed file.

3. Research methodology

The scientific approach is based on information from the national and international literature, as well as from the practical documentation made through the presented case study. In the elaboration of the paper, we chose to combine quantitative and qualitative research in order to obtain the expected results. Following the research undertaken, the research tools belong to the two categories of methods, namely: literature review, comparison, descriptive analysis, case study method, data interpretation. In carrying out the case study, I presented the way of recording in accounting some operations regarding the sale of fixed assets during the period when the company X SRL is in insolvency proceedings, the presentation of a centralizing statement of the receipts and payments made by it, as well as a liquidation balance sheet. In another aspect presented is the one related to the judicial liquidator's report on the state of the company X SRL.

The main method used to achieve the research objectives is the case study method, which presents the main accounting aspects within X SRL, an insolvent company.

4. Findings

Next, we will present some accounting records related to X SRL, an insolvent company. All documents issued by company X SRL state that the company is in bankruptcy. These accounting entries are as follows:

- sale of land with an area of 1700 square meters with a value of 206825 Lei and material storage worth 108313 Lei. The accounting value of the land is 226555 Lei and the deposit is 118645 Lei. The deposit was fully amortized.

4111 „Customer”	=	7583 „ Income from the sale of assets and other capital operations”	206825 Lei
6583 „Expenditures regarding the transferred assets and other capital operations”	=	2111 „Lands”	226555 Lei
6583 „Expenditures regarding the transferred assets and other capital operations”	=	212 „Buildings”	118645 Lei

- the sale of commercial space with an area of 36.89 square meters in the amount of 96254.42 Lei, the book value being 141330 Rn, fully amortized

4111 „Customer”	=	7583 „ Income from the sale of assets and other capital operations”	96254.42 Lei
6583 „Expenditures regarding the transferred assets and other capital operations”	=	212 „Buildings”	141330 Lei

- the sale of a drilling machine worth 1260 Lei, VAT 239.40 Lei. Book value 2050, fully amortized

4111 „Customer”	=	7583 „ Income from the sale of assets and other capital operations”	1260 Lei
4111 „Customer”	=	4427 „ VAT collected”	239.40 Lei
6583 „Expenditures regarding the transferred assets and other capital operations”	=	2131 „Technological equipment”	2050 Lei

The situation of cumulative payments and receipts since the beginning of the liquidation period is presented as follows:

1. available at the beginning of the period: 721.91 Lei of which available in the cashier: 619.94 Lei, available in the bank: 101.97 Lei.

2. receipts: 1232150.88 Lei: sales of goods 1124450.38 Lei, debit receipts 18127.94 Lei, receipt of rent 33834.01, receipt of good performance guarantee 27611.35 Lei, receipt of utility bills 28127.2 Lei, receipt of interest 76.17 Lei.

3. Payments 1232872.79 Lei: postal expenses 5691.52 Lei, salaries 30228 Lei, suppliers 24179 Lei, liquidation fund 40125.39 Lei, liquidator's fee 125131.5 Lei, etc.

4. Available at the end of the period 0 Lei.

This statement of income and receipts, as well as any other document: invoice, receipt, salary statement, are signed by the judicial liquidator.

Also, the verification balance of the company X SRL and the liquidation balance are drawn up. From the liquidation balance sheet of the company X SRL, the indicators are presented as follows:

- Fixed assets - 1611839 Lei
- Current assets - 722 Lei
- Short-term debts - 2682350 Lei
- Negative working capital - 1069787 Lei
- Paid-up capital - 200 Lei
- Loss of the financial year - 1069989 Lei
- Equity - 1069789 Lei.

What is the liquidator's report? According to art. 59 of Law no. 85/2014, the judicial administrator will submit a monthly report describing how he fulfilled his duties, justifying the expenses incurred with the administration of the procedure or other expenses incurred from the existing funds in the debtor's estate, as well as, if necessary, the stage of the inventory. The report will also mention the fee collected by the judicial administrator, specifying the manner of its calculation. This report is submitted to the case file and published electronically in the Insolvency Proceedings Bulletin.

Next, we will present, synthetically, the content of the judicial liquidator's report, made by company X SRL, the company entered into insolvency.

The structure of the insolvency report of X SRL includes the following sections:

1. Identification data of the debtor: company name, address, including information on the appointment of the judicial administrator; it is appointed by the court within the locality where the debtor is from;

2. Measures taken in the procedure by the judicial administrator: reference is made to financial statements from the last 3 financial years, the trial balance, the list of creditors, the list of assets, etc.

Based on the list of creditors made available by the debtor company, notifications were made pursuant to art. 61 of Law no. 85/2006 regarding the opening of insolvency proceedings and the submission of debt statements. The notification was made through the Bulletin of Insolvency Proceedings, through correspondence sent to each creditor, and for unknown creditors, an announcement was published in a local circulation newspaper. According to the notification, the following terms were established:

- the deadline for registering the application for the admission of claims on the debtor's assets;
- the deadline for the verification of claims, the preparation, display and communication of the preliminary table of claims;
- Any objections to the preliminary table shall be submitted to the court within 5 days from the date of publication in Insolvency Proceedings Bulletin of the preliminary table according to art. 73 para. (2) from the law on the insolvency procedure;
- the deadline for resolving any appeals filed against the preliminary table of claims.

The first meeting of creditors was set on a specific date at the judicial administrator's headquarters, with the following agenda: presentation of the debtor's situation; appointment of the creditors' committee; confirming the judicial administrator and establishing his remuneration; other mentions.

During the creditors' meeting, the following were approved: the creditors' committee was appointed, consisting of 3 members; the receiver was confirmed and the receiver's fee was approved.

3. Measures taken by the judicial liquidator

The court of the locality where company X SRL is located ordered its entry into insolvency proceedings and the liquidator Y was appointed. The meeting of creditors was convened for a specific date, at the headquarters of the judicial liquidator with the following agenda: confirmation of the judicial liquidator and determination of remuneration. During the meeting of creditors, Y SRL was confirmed as judicial liquidator and the remuneration of the judicial liquidator was approved.

4. Information about Total active

According to the last financial reports drawn up by the debtor X SRL before the opening of the insolvency procedure, the company's patrimony includes the following:

- Other intangible assets in the amount of 5825 Lei - of which the value of 5742 Lei is amortized;
- Lands worth 777762 Lei;

- Constructions worth 898,523 Lei - of which 65591 Lei is amortized value;
- Technological equipment, devices and technical installations, means of transport in the amount of 864229 Lei - of which 833769 Lei is amortized value;
- Office furniture worth 65072 Lei - of which 47222 Lei is amortized value;
- Raw materials in the amount of 48298.3 Lei;
- Consumable materials 5635.29 Lei;
- Services in progress 349976.91 Lei;
- Finished products worth 2714 Lei;
- Goods 9112 Lei;
- Debtor suppliers 38802 Lei;
- Customers worth 174585 Lei;
- Shares held in entities 31259 Lei;
- Current bank accounts 27156 Lei;
- Available at home 6390 Lei;
- Treasury advances -2973 Lei.

An inventory of the assets of the debtor's estate was carried out.

5. Information about total passive

Information related to the passive mass, refers to the total of registered receivables in the amount of 2682350.05 Lei. Each creditor is then presented with the corresponding amount.

6. The situation of receipts and payments. Distribution plans

According to the situation of receipts and payments drawn up during the liquidation period, receipts were made in the amount of 1232150.88 Lei, as follows:

- 124450.38 Lei - from the capitalization of goods;
- 18127.94 Lei – debt recovery;
- 33834.01 Lei - rent receipts;
- 28127.2 Lei – utility re-invoicing;
- 27611.36 Lei - collection of good performance guarantees;
- 76.17 Lei – interest.

The amount available at the beginning of the period was 721.91 Lei.

From the collected amounts, payments were made in the amount of 1232872.79 Lei, as follows:

- 5691.52 Lei - postal expenses, advertisements, bank commissions;
- 7021 Lei – evaluation services expenses;
- 17947 Lei – current obligations to the salary budget;
- 1467 Lei – current microenterprise tax: 30228 Lei – current VAT; 24179 Lei - salaries;
- 40125.39 Lei – utility suppliers;
- 23947.8 Lei – 2% liquidation fund;
- 125131.5 Lei – administrator/judicial liquidator fee;
- 929000 Lei - amounts distributed to creditors according to distribution plans no. 1-5;
- 2549.58 – guaranteed credit accessories;
- 25585 Lei - expenses for taking over and keeping the archive.

In the bankruptcy procedure, 5 distribution plans were drawn up.

7. Proposals and requests addressed to the syndic judge

Considering that the debtor does not own any assets to capitalize on and no longer has receivables to be collected, it is proposed to the syndic judge, after the approval of the final report, to order, based on art. 132 paragraph 2 of Law 85/2006, the closure of the bankruptcy procedure and the deletion of the debtor from the records of the Trade Registry Office.

Also, according to art. 136 of Law 85/2006 requires the discharge of the judicial liquidator from any duties and responsibilities regarding the procedure, the debtor and his assets, creditors, holders of guarantees and associates.

The final report, accompanied by the liquidation balance sheet, will be notified to the creditors and the debtor, and a copy has been posted at the court registry, art. 129 paragraph 1 of Law no. 85/2006.

5. Conclusions

A company becomes insolvent when it can no longer pay its debts. Insolvency should not be confused with bankruptcy, bankruptcy being the last stage of insolvency, companies reaching this situation only when they cannot pay their debts within a certain period, a period imposed by law. Insolvency is of two types: general and simplified. The general procedure provides for judicial reorganization actions, while the simplified procedure provides for direct entry into bankruptcy.

Summarizing the above, we can state that insolvency is a measure by which the debtor's liabilities are covered. The insolvency procedure is a collective procedure, essentially judicial, transparent, generally applicable, a procedure of compromise and sacrifice. It is a measure to relieve the company of the financial difficulties it is facing, to recover it, and in case of impossibility of recovery, to liquidate the assets and remove the company in question from the market (Piperea, 2008, p.33 -34).

A legal liquidator is appointed both in the case of the admission of a liquidation plan and in the case of bankruptcy proceedings.

In case of the opening of the insolvency procedure, the outstanding fees of the insolvency practitioner chosen in an insolvency prevention procedure are entered in the table of creditors, similar to new and intermediate financings.

As future research directions, we propose to further study the activity of the company X SRL in order to be able to observe the final result of the insolvency procedure, its recovery or entry into bankruptcy.

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