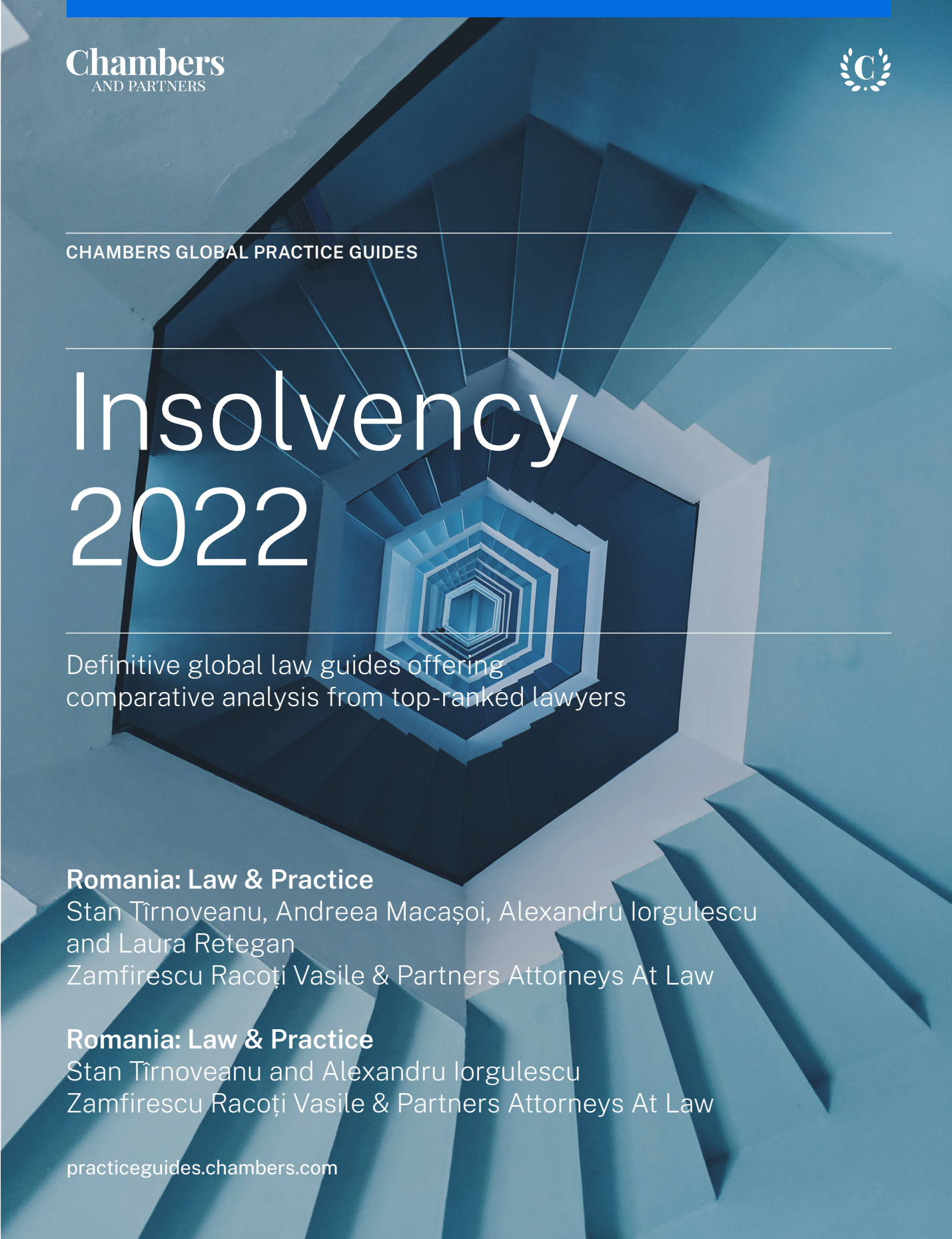
Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Insolvency 2022

Definitive global law guides offering comparative analysis from top-ranked lawyers



Romania: Law & Practice
Stan Tîrnoveanu, Andreea Macașoi, Alexandru Iorgulescu and Laura Retegan
Zamfirescu Racoți Vasile & Partners Attorneys At Law

Romania: Law & Practice
Stan Tîrnoveanu and Alexandru Iorgulescu
Zamfirescu Racoți Vasile & Partners Attorneys At Law

practiceguides.chambers.com

ROMANIA

Law and Practice

Contributed by:
Stan Tîrnoveanu, Andreea Macașoi, Alexandru Iorgulescu and Laura Retegan
Zamfirescu Racoți Vasile & Partners Attorneys At Law
see p.24

Contents

ROMANIA

Contributed by: Stan Tîmoveanu, Andreea Macașoi, Alexandru Iorgulescu and Laura Retegan,
Zamfirescu Racoți Vasile & Partners Attorneys At Law

1. State of the Restructuring Market

1.1 Market Trends and Changes

During the first eight months of 2022, 4,800 Romanian companies have become insolvent, an increase of over 11% compared to the same period of 2021. There is also an increase in the total financial losses reported by the insolvent companies compared to last year. Among the most affected sectors are construction, retail, and manufacturing industry.

The business environment recovering from the COVID-19 pandemic had to bear the effects of two new crises: the energy crisis that generated record-high inflation and the war in Ukraine. In this context, it is likely that the upward trend in new insolvency cases will be maintained. The most important stress is now experienced by the companies with low profit margins where the utilities (electricity, natural gas) represent a higher percentage in the production cost. State aid measures oriented towards capping energy prices and granting partial compensation for electricity and natural gas bills have been put in place since late 2021.

The risk of contamination effect among the suppliers of the insolvent companies remains high, while the financing costs are also up from last year. In the medium-term, a reversal of the trends may be possible if Romania manages to absorb its allocated EU funds and maintain its economic growth.

COVID-19

While the state of alert was abolished in Romania in March 2022, by law No 220/2022, some of the interim measures that applied during the state of alert were extended for a period of one year since the law entered into force. We are referring to the removal of the obligation to request the opening of insolvency proceedings (within 30 days from its occurrence), and the possibility to extend the duration of the reorganisation plan up to five years.

Legislative Changes in 2022

Law No 85/2014, which represents the current legal framework for insolvency and prevention procedures of companies in Romania, suffered substantial modifications in 2022 due to entry into force of Law No 216/2022. Title 1 – *Preventive measures* of law No 85/2014 was both completed and modified to transpose the Restructuring and Insolvency Directive (Directive (EU) 2019/1023). The law introduces new concepts like the state of difficulty (which is not limited to financial difficulties but can be generated by any negative event than can trigger the risk of insolvency) and regulates an early warning mechanism that companies can call upon, as a kind of pre-test if there is a risk of insolvency. According to the recent modifications the two main prevention mechanisms (procedures) are the restructuring agreement and the arrangement with creditors, which are partially collective and minimally judicial procedures, in which the debtor remains in possession and carries on its activity on the principle of business as usual.

Other minor changes to Law No 85/2014 were made through Emergency Ordinance No 62/2022 (the effects on the insurance contracts caused by the opening of a bankruptcy procedure of an insurance/reinsurance company) and Law No 320/2021 (priority rank for receivables resulting from elements of own funds in case of bankruptcy of a credit institution or investment company).

2. Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

2.1 Overview of Laws and Statutory Regimes

Currently, the insolvency procedure is regulated by a law (amended substantially in 2014, 2018 and 2022) that provides also for two procedures of redressing the solvable debtor's activity – namely, the procedure of Restructuring Agreement (in Romanian "*acord de restructurare*") and the procedure of arrangement with creditors (in Romanian "*concordat preventiv*"). The latter keeps its name after 2022 amendments, yet it is modified in its substance. The provisions of the special law can be supplemented with the provisions of Civil Procedure Code and of Civil Code, to the extent that they do not contravene the latter.

2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

The law provides for two voluntary procedures of redressing a debtor's activity outside the courtroom: the procedure of Restructuring Agreement, and the procedure of arrangement with creditors. These procedures are applicable in the case of a debtor in difficulty, including financial difficulty. In the case of a debtor in payment default, the law also provides for a judiciary procedure.

The procedure of Restructuring Agreement is a confidential, partially collective, and minimum judicial procedure by which a restructuring administrator assists the debtor or, at the debtor's request, negotiates itself with the creditors in order to outbalance the state of difficulty in which the company finds itself. The intrusion of the syndic judge is limited to verifying the legality of the restructuring agreement, including the fair treatment of creditors and its approval of the creditors holding at least 30% of the affected receivables. The possibility of cross-class cram-down is provided.

An arrangement with creditors is an agreement concluded between the company in difficulty and the creditors holding at least 30% of the affected receivables (other specific conditions are applicable), by whom a plan for redress, which can modify the creditors' receivables, is proposed. The procedure is co-ordinated by an administrator and involves a larger contribution of the syndic judge, who approves the plan for redress. The debtor benefits from a temporary stay of individual enforcement actions from three to a maximum of 12 months. The possibility of cross-class cram-down is provided.

The insolvency procedure may consist either of a simplified procedure, in which case the company enters into bankruptcy directly, or a general procedure, in which case the company may enter, after the observation period, into the reorganisation period (if there are chances of redressing and the creditors agree with the proposed measure) and, possibly (in case of the failure of a reorganisation plan or when such a plan is not proposed or not accepted), into bankruptcy.

2.3 Obligation to Commence Formal Insolvency Proceedings

Romanian law sets forth that an insolvent debtor is obliged to file a claim with the tribunal requesting that it be subject to the insolvency procedure within a maximum of 30 days from the occurrence of insolvency. This is defined as the point at which insufficient funds are available for the payment of the certain, liquid and payable debts of more than 60 days. The minimum amount of these debts should be RON50,000.

The patrimonial liability of the management bodies and/or supervisory bodies within the company, as well as of any other persons who contributed to the insolvency of the debtor may be requested, if the continuation of the company's activity was in their own interest and this clearly led to the cessation of payments.

2.4 Commencing Involuntary Proceedings

Any creditor holding a receivable higher than RON50,000 against a company that is unpaid in a term of at least 60 days from its maturity may request the opening of the insolvency procedure against the company.

2.5 Requirement for Insolvency

The insolvency state is a condition that must be met for requesting the opening of an involuntary procedure. The insolvency state is presumed to be installed when the state of the debtor is characterised by the absence of available funds for the payment of certain, liquid debts overdue for more than 60 days. The presumption is relative. The minimum amount of these debts must be RON50,000.

2.6 Specific Statutory Restructuring and Insolvency Regimes

The provisions relevant to banks, commercial lenders and other credit institutions are found in Law 85/2014 and Law 312/2015 (amended in 2021 and 2022), which also regulates the procedure of redressing and restructuring credit institutions. Special supervision is ordered by the National Bank of Romania in its capacity as resolution authority.

With regard to the regime applicable to the insolvency of credit institutions, we note only some different aspects relating to the characteristics of the state of insolvency of the credit institution, the necessity of obtaining an approval prior to the opening of the bankruptcy procedure, and the protection conferred by the law of depositors in the banking system on the payment (made by the National Guaranteeing Fund).

The provisions relevant to insurance companies and undertakings are the provisions of Law 503/2004 on financial redressing, bankruptcy, dissolution and voluntary liquidation in the activity of insurance.

The procedure of financial redressing ("pre-bankruptcy" procedure) exceeds court control and is overseen by the Financial Supervisory Authority. In accordance with the legislation of the Romanian state, the financial redressing procedure produces its effects in the entire EU without other formalities, including what defines third parties from other member states.

In what regards the administrative-territorial units, there are special provisions regulating the insolvency regime, namely Emergency Ordinance 46/2013 on the financial crisis and the insolvency of the administrative-territorial units.

The Insolvency Code ("Law 85/2014") does not apply to the pre-university and university education units and research-development institutes, centres or units organised as public, or public law institutions. Hence, if they are national companies, Law 85/2014 shall apply, but if they are educational institutions, schools or medical institutions subordinated to the administrative-territorial units, then the applicable law is the Emergency Ordinance 46/2013.

3. Out-of-Court Restructurings and Consensual Workouts

3.1 Consensual and Other Out-of-Court Workouts and Restructurings

As an informal and consensual procedure for the prevention of insolvency, the Insolvency Code provides the procedure of the Restructuring Agreement, which is characterised by confidential and unlimited in time negotiations between the debtor and its creditors, assisted by a restructuring administrator. However, the law does not provide specific rules for the conduct of the negotiations, except that the restructuring agreement must respect the fair treatment of the creditors. This is a requirement verified, among other legality elements, by the syndic judge.

Romanian legislation also regulates the arrangement with creditors, which is a less formal negotiation procedure, allowing a temporary stay of individual enforcement actions against the debtor. The provisions of the law regarding the voting and quorum requirements and the fair treatment of creditors are similar to the Restructuring Agreement procedure.

In general, restructuring market participants and professionals place greater trust in the possibility of recovering receivables outside of insolvency procedures, ie, within an informal procedure. Nonetheless, historically speaking, the consensual procedures are very rarely used in practice, individual negotiations being preferred. The Restructuring Agreement and the arrangement with creditors procedures, as inserted in 2022, are still a novelty and therefore used quite rarely in practice so far.

Banks and other financing institutions try to support companies in financial difficulty by the rescheduling of credit, etc. Most recently, banks were more and more supportive of companies, given the rather slight possibilities for financers to cover the entire receivable in the insolvency procedures.

Romanian law does not make an obligation for prior procedures to be followed before the filing of a claim for the prevention of insolvency or of insolvency. Neither does it require mandatory consensual restructuring negotiations before commencement of a formal “statutory process”. If a company is in a state of insolvency, its directors must address the tribunal so that, after the opening of the procedure, any negotiation with creditors can only be made through the reorganisation plan.

3.2 Consensual Restructuring and Workout Processes

The use of consensual “standstills” and credit agreement default waivers as part of an initial informal and consensual process is not excluded, and credit institutions use these types of conventions with their debtors. Having in view that such informal understandings are not mandatory but are left to the choice of the debtor/creditors to opt for them, the law does not provide for any particular obligations incumbent on them.

During an informal and consensual restructuring process, the debtor must comply with all obligations as per the restructuring agreement/plan for redress approved by creditors, and confirmed (in case of restructuring agreement procedure) or approved (in case of arrangement with creditors procedure) by the syndic judge.

Usually, in the Restructuring Agreement procedure and in that of the arrangement with creditors, no committee or representative of the creditors is appointed, although no such

appointment is forbidden. For the appointment of one or more representatives the common law rules of the mandate apply, but most of the time there is no such appointment.

The appointment of remunerated proxies of the creditors is not forbidden, but, as a rule, negotiations are conducted with the main creditors individually. The administrators in arrangements with creditors and Restructuring Agreement procedure receive a remuneration from the debtor. There are no criteria for the determination of a committee or of co-ordinators.

Usually, in procedures for prevention of insolvency, prior to the opening of the procedure itself, the creditors are given the necessary information in order for them to assess the chances of redressing and of payment of the receivables according to the assumed obligations. During the restructuring procedures, a quarterly report is provided by the restructuring administrator to the creditors, reflecting how the restructuring agreement/plan for redress is being implemented and whether the viability of the debtor is maintained.

No guarantee may be changed in such a procedure, except with the consent of the guaranteed creditor.

Restructuring agreements and plans for redress can provide for new financing, which can benefit of a super-priority.

3.3 New Money

It is possible to invest in a company in restructuring preventive proceedings, ie, the Restructuring Agreement and the arrangement with the creditors with the benefit of a super-priority, to the extent that the restructuring agreement/plan for redress provides for it. Nonetheless, if the company subsequently becomes insolvent, a super-priority will be given to new financing granted in insolvency, even over pre-insolvency financing.

3.4 Duties on Creditors

Romanian legislation contains no regulation regarding the duties of creditors to each other, or of the company or third parties. However, specialised doctrine has started to talk rather timidly about a possible abuse of majority, a case where common law provides the possibility to claim damages. Still, there are no judiciary precedents in this regard.

Conflict of interest is an element to be taken into account by members of the creditors' committee when exercising their voting rights.

3.5 Out-of-Court Financial Restructuring or Workout

If a reorganisation plan is voted on validly, as we shall describe below, certain clauses from the credit agreements may be amended.

"Cram-downs" are not a practice in Romanian mandatory judicial procedure and, usually, debtors may propose their own reorganisation plan. Nevertheless, there may be situations in which a reorganisation plan is confirmed if it meets the double threshold of being voted by creditors accounting for at least 30% of the total amount of the receivables, and is accepted by a majority of the categories of creditors.

With regard to the voluntary redressing procedures, ie, the Restructuring Agreement procedure and the arrangement with creditors procedure, the imposition of creditors' will is allowed and the possibility of cross-cramdowns is regulated, provided that fair treatment is ensured for creditors who vote against. The requirements

of quorum and the approval of at least 30% of affected receivables are applicable.

4. Secured Creditor Rights, Remedies and Priorities

4.1 Liens/Security

Romanian legislation regulates the following types of collateral and privileges:

- immovable mortgages;
- movable mortgages (including on the accounts and receivables or on the movable assets);
- special privileges;
- pledges; and
- retention rights.

4.2 Rights and Remedies

Secured creditors benefit from adequate protection in the insolvency procedure, having special prerogatives. As a rule, all judicial and extra-judicial actions, as well as individual enforcement measures, are suspended from the date of the opening of the insolvency procedure.

Nonetheless, as an exception stipulated in favour of the secured creditors, these are permitted to request the lifting of the measure of suspension and the immediate sale of the asset affected by the guarantee.

The amounts obtained from the sale of the assets affected by the guarantee will be distributed with priority given to the creditors whose receivable is secured with such assets, these at the same time being permitted (unlike the other creditors) to calculate and also to charge accessories to the principal, including after the date of opening of the insolvency procedure.

4.3 Special Procedural Protections and Rights

Secured creditors have the right of preference and of priority to the satisfaction of their receivable from the amounts obtained as a result of the turning to account of their guarantees.

At the same time, they may also calculate interests after the date of opening of the procedure, if the value of the asset affected by the guarantee allows it. Another specific right of the secured creditors is the possibility of individual enforcement of the assets affected by their guarantee, in certain conditions provided by the law – especially when an asset is not essential for a reorganisation plan.

5. Unsecured Creditor Rights, Remedies and Priorities

5.1 Differing Rights and Priorities

In bankruptcy, the amounts obtained from liquidation are distributed to the creditors following an order of distribution depending on the rank of the claim. Secured creditors have priority in distribution from the funds obtained from the sale of assets which are affected by causes of privileges in their favour. As opposed to the secured, the unsecured creditors are unable to calculate accessories after the insolvency procedure is opened.

In reorganisation, unsecured creditors have the right to vote in their corresponding class when the reorganisation plan is discussed.

Besides the category of secured claims, the following four categories can vote separately: employee claims, budgetary claims, claims of indispensable creditors (if any), other unsecured claims.

Nevertheless, it is also possible that both secured and unsecured creditors suffer from losses (haircuts) from the implementation of a reorganisation plan.

From the date of opening the insolvency procedure, the creditors will be able to exercise their rights only in this collective procedure (the creditors must request, within a certain deadline, the registration of their receivables arising prior to the opening of the procedure in the table of creditors, by filing a statement of claim).

5.2 Unsecured Trade Creditors

As a rule, receivables held by the simple contract creditors may be reduced, by the reorganisation plan. In practice, in most insolvency procedures, the reorganisation plan severely trims down (haircuts) the unsecured receivables up to 0%. If a higher-ranking category of receivables that rejected the plan is disadvantaged by the plan, the lower-ranking categories cannot receive more than they would have received in the event of bankruptcy (in the event of bankruptcy, distributions to unsecured creditors are very low). In case of bankruptcy the unsecured category is split in four categories with successive priority rights.

5.3 Rights and Remedies for Unsecured Creditors

In the procedure of restructuring agreement and the procedure of arrangement with creditors, creditors with affected receivables have the right to vote regarding restructuring agreement, or respectively, the restructuring plan.

In insolvency the unsecured creditors have a voting right, in the corresponding classes, over the adoption of the proposed reorganisation plan. As regards the reorganisation plan, the creditors have the right to file to the syndic judge objections regarding the legality of the plan, as well as the right to request the annulment of the decision of the meeting of creditors by which the reorganisation plan was voted. If the reorganisation plan is confirmed, the creditors' receivables are modified as provided in the plan (unless the reorganisation fails).

In the judicial reorganisation procedure, unsecured creditors may file a claim for bankruptcy if their receivables are not paid according to the schedule of payments provided by the plan or if new debts are accumulated towards the creditors that support the current activity of the debtor in the procedure.

In the special situation in which simple contract creditors have concluded with the debtor a sale-purchase pre-agreement on an immovable asset, these creditors may file a request for the conclusion of the pre-agreements and transfer of the right of ownership over the immovable, without the asset being sold as part of the insolvency procedure (assuming certain specific conditions provided by the law have been met).

5.4 Pre-judgment Attachments

Precautionary measures may be considered for determining the secured character of the receivable claimed by the creditor that established such a measure (on condition that certain expressly provided conditions have been met), without yet preventing the possibility of sale of the assets in the liquidation procedure. In principle, the assets sold by the insolvency practitioner in the insolvency procedure are acquired free of encumbrances, except preventive measures ordered in the criminal case file with a view to special confiscation and/or extended confiscation.

As a general rule, from the date of the opening of the insolvency procedure, all judicial or extra-judicial actions or enforcement measures for the realisation of receivables against the debtor's assets are suspended.

An exception provided by the law refers to the existence of a movable mortgage on a cash collateral account of the debtor in insolvency, in which case the available funds will be released to the creditor based on a simple request made within the observation period.

5.5 Priority Claims in Restructuring and Insolvency Proceedings

In preventive procedures, the restructuring agreement and restructuring plan contain the debt payment schedule. In the judicial procedure of insolvency, with reference to the indicated categories, the law establishes the following satisfaction order from the amounts resulting from liquidation:

- duties and any other procedure expenses, including the fee of the insolvency administrator/judicial liquidator;
- receivables deriving from financing granted during the procedure;
- receivables deriving from financing granted in insolvency prevention procedures (including practitioner fee for such procedures);
- receivables deriving from labour relations;
- receivables deriving from the continuation of the debtor's activity;
- budgetary receivables;
- receivables representing the amounts owed by the debtor to third parties as support obligations, child allowances or as periodic payment intended to provide a means of subsistence;
- receivables representing the amounts established by the court for the support of the debtor and their family (if they are a natural person);
- receivables representing bank loans, those resulting from deliveries of goods, performance of services or other works, from rents, including bonds and receivables representing the difference between the value of the entire receivable and the market value of the recovered assets that are the subject to the lease contract terminated before the opening of the insolvency procedure;
- other unsecured receivables; and
- subordinated receivables.

In insolvency, the expenses and specified duties of the procedure, as well as the financing granted during the procedure (beneficiary of a preferential cause arising during the insolvency procedure), have priority over the secured receivables. After these two categories of receivables, the secured creditors are the first to be satisfied from the sale of the assets under their guarantee.

If, from the price obtained from the sale of the asset affected by causes of privilege, the receivable of the secured creditor is not covered, then the uncovered difference will be registered in the category of unsecured receivables according to their nature.

As we detailed before, the unsecured receivables have a different order of payment depending on their source and, as the case may be, the claim holder.

6. Statutory Restructuring, Rehabilitation and Reorganisation Proceedings

6.1 Statutory Process for a Financial Restructuring/Reorganisation

With regard to the reorganisation plan, the law provides a distinct voting modality from the other decisions that the creditors make in the creditors' meeting. Each receivable benefits from a voting right that its holder exercises within the category of receivables of which such receivable is a part of.

The following receivables represent distinct categories:

- the receivables benefiting from preference rights;
- salary receivables;
- budgetary receivables;
- the receivables of indispensable creditors; and
- the other simple contract receivables.

Accepting a Reorganisation Plan

A reorganisation plan will be considered accepted by a category of receivables in the event that the plan is accepted by creditors representing an absolute majority of the value of the receivables from that category. Another condition for the acceptance of the plan is that creditors representing at least 30% of the total value of the body of creditors vote for its approval.

The reorganisation procedure is initiated by the submission of a reorganisation plan within the term provided by the law. The reorganisation plan may be proposed by the debtor, by the insolvency administrator and/or by one or more creditors holding together at least 20% of the total value of the receivables contained by the final table.

The law does not exclude the possibility of the submission of several reorganisation plans, by category, although only one may be accepted by the creditors.

Performing Reorganisation

Reorganisation may be performed, for example, by one of the following means:

- the debtor maintaining full or partial management of its activity, including the right of disposal of the assets from its estate, with the supervision of its activity by the insolvency administrator;
- obtaining financial resources to support the achievement of the plan (the financing approved by the plan benefiting from priority at restitution);
- transmission of all or some of the assets from the debtor's estate to one or several natural or legal persons, established prior to or after the confirmation of the plan;
- the debtor's merger or division, in the conditions of the law;
- liquidation of all or some of the assets of the debtor's estate, separately or en bloc, free of any encumbrances, or their being given in payment to the debtor's creditors (with the consent of such creditors) on the account of the receivables that these have against the debtor's estate;
- partial or total liquidation of the debtor's asset for the execution of the plan (the amounts of money obtained after the sale of certain assets that are the object of guarantees must be distributed to the creditors holding such guarantees);
- the change or termination of the guarantees, with the mandatory granting of a guarantee

or equivalent protection to the benefit of the holding creditor, up to the value of their receivable, including the interests established according to the agreements or according to the reorganisation plan, based on an assessment report;
- prolongation of the maturity date, as well as the change of the interest rate, of the penalty or of any other clause from the agreement or of the other sources of its obligations; or
- change of the debtor's articles of incorporation.

Composition of Plans

From the point of view of the financial condition of the debtor, the reorganisation plan must comprise a projection of the cash flow that would allow for the execution of the measures proposed by the plan. In terms of viability, the creditors decide in principle, and then the court of law may resort to a neutral insolvency practitioner that would express a point of view on the possibilities of the plan's achievement. In principle, the reorganisation plan may be proposed after the general insolvency procedure has been opened against the debtor. At the end of the observation period, after the completion of the body of creditors, any of the persons enumerated above may propose a reorganisation plan.

In the event the proposed reorganisation plan is accepted by the creditors, the syndic judge will analyse the legality of such plan and, if all conditions are met, will confirm the reorganisation. As of the confirmation of the plan, the debtor enters into the reorganisation procedure, its activity being conducted pursuant to the provisions of the plan.

In reorganisation, a necessary and imperative condition which shall be met is the correct and fair treatment of the receivables, so that all receive at least as much as they would have received in bankruptcy.

The main purpose of the reorganisation plan is the company's redressing, covering as high as possible a percentage from the body of creditors and subsequently the company's reinsertion in the economic circuit, which can obviously have numerous benefits, including of a social nature by means of the protection of jobs.

Following the confirmation of a reorganisation plan, the debtor will conduct its activity under the supervision of the insolvency administrator, the court following only to solve certain aspects of which it is notified and that are related to the legality of the measures and of the means of execution of the plan. As mentioned, the reorganisation procedure starts as of the date of confirmation of the plan by the court, as voted by the creditors.

Expedited Procedure

Romanian law does not provide for a distinct expedited procedure, but it does allow that a reorganisation plan may be executed within three years, respectively four years for legal persons, with the possibility of prolongation. The maximum total of the reorganisation plan cannot exceed five years from the initial confirmation. However, if the debtor's activity allows it, the plan may last for any period shorter than three, respectively four years.

The claims for current receivables are assessed by the insolvency administrator, which offers a point of view. In the event there are any disputes with regard to the claimed receivable, the interested creditor may address the court of law. The reorganisation plan validly voted for by the creditors is also mandatory for the creditors who have not expressed a point of view.

The reorganisation plan is public, may be analysed by each creditor, is submitted to the case file and to the trade registry and is usually also accessible online. Nonetheless, the plan must not contain detailed remarks regarding the conduct of the economic activity, nor disclose the trade secrets of the company.

The plan may be challenged before the syndic judge when the court discusses the confirmation of the plan. The creditors' use of this mechanism does not imply the filing of a separate challenge. For non-legality grounds, however, the interested party may separately challenge the decision of the creditors whereby such plan was approved.

The plan is voted on by the creditors on the aforementioned conditions, and subsequently confirmed by the court. The receivables will be paid as per the schedule of payments, which is a mandatory annex of any reorganisation plan. Upon the moment of payment of all the receivables listed in the schedule of payments, the reorganisation procedure may be closed and the company re-enters into the economic circuit.

6.2 Position of the Company

From the date of the opening of the insolvency procedure under the law, all judicial or extrajudicial actions or enforcement measures for the recovery of the receivables against the debtor's estate are suspended. From this point on, they may only be turned to account in the insolvency procedure.

The company can continue to operate its business as usual after the date of the opening of the procedure, under the supervision of the insolvency administrator. In cases where the court orders the lifting of the management right, the management of the company passes to the insolvency administrator.

After the procedure opening date, the shareholders of the debtor are summoned to elect a special administrator. This will be the only entity able to manage the company, under the supervision of the insolvency administrator.

In the observation period and during the reorganisation period, the debtor can obtain financing through direct negotiation with the financer and following the approval of the loan conditions by its creditors.

During the preventive proceedings, the debtor remains in control of the business, according to the principle "debtor in possession".

6.3 Roles of Creditors

From the moment of drafting the preliminary table, creditors are registered by categories of receivables, namely the receivables benefiting from preference rights, salary receivables, budgetary receivables and simple contract receivables.

The creditors convene in a general meeting of creditors, of which all creditors are part. If there is a large number of creditors, a creditors' committee of three or five members can be elected, chosen in the creditors' meeting from those who manifest their intention to be part of the committee, and in the order of the receivables, from the larger ones to the smaller ones, so that each category of creditors is represented. The expenses are incurred by each creditor, these not being settled by the debtor.

Creditors have access to all the information brought to their knowledge by the insolvency administrator by means of its activity reports. These activity reports and the quarterly financial statements drafted in the reorganisation procedure are published in the Insolvency Procedure

Bulletin. The documents are submitted to the case file and are communicated to the creditors present in court at the hearings. The quarterly financial statements drafted in the reorganisation procedure are approved by the creditors' committee.

6.4 Claims of Dissenting Creditors

The receivables of a particular class of creditors may be modified by means of the reorganisation plan, even if the creditors in question voted against the plan. The only conditions are that all the categories shall be treated fairly, and that they should not receive less in the reorganisation procedure than they would have received in the bankruptcy procedure.

The preventive proceedings provide that the creditors should not receive less then they would receive in "the next best alternative scenario", which may even mean bankruptcy, based on an evaluation report drawn up by an authorised valuer no more than six months before the date of the opening of the procedure.

6.5 Trading of Claims Against a Company

Claims may be traded without any approval from other parties except those involved in the assignment of the receivable. The transfer will be effective and recognised once it is notified to the debtor and to the judicial administrator.

6.6 Use of a Restructuring Procedure to Reorganise a Corporate Group

A restructuring procedure may not be utilised to reorganise a corporate group on a combined basis for administrative efficiency, but different types of M&A operations can be performed within a reorganisation procedure.

6.7 Restrictions on a Company's Use of Its Assets

Should a reorganisation plan be accepted by the creditors and confirmed by the judge, the debtor's assets may be sold pursuant to the provisions of the reorganisation plan.

6.8 Asset Disposition and Related Procedures

The activity of the debtor is run by the special administrator appointed by the shareholders, under the supervision of the judicial administrator.

In the insolvency procedure the assets sold are free and clear of any claims.

The creditors can participate in the auctions and under some conditions they can bid with their own receivable.

During a restructuring proceeding, it is possible to make sales and similar transactions which have been pre-negotiated, provided that these transactions are incorporated within the reorganisation plan that was accepted by the creditors and confirmed by the judge.

6.9 Secured Creditor Liens and Security Arrangements

No changes to the liens and security arrangements of a secured creditor can be made unless the creditor approves it or if the contractual conditions for releasing such securities are met.

6.10 Priority New Money

New money investment or loans can be secured by assets of the company that are free of any liens and securities and can benefit from a super-priority.

6.11 Determining the Value of Claims and Creditors

It is not possible to use the statutory process as a forum for determining the value of claims and those creditors with an economic interest in the company.

6.12 Restructuring or Reorganisation Agreement

A restructuring or reorganisation plan or agreement among creditors that emerges is subject to an overall "fairness" test. In order for it to be effective, the creditors should accept the plan and the court must confirm it.

A company or statutory office holder may reject or disclaim contracts. The effects of this on the parties are as they would be for any other contract rejected or disclaimed by a company that were not subject to an insolvency procedure.

6.13 Non-debtor Parties

Any kind of operations that can release non-debtor parties from liabilities must be included in the reorganisation plan and these should be accepted by the creditors and confirmed by the judge in order for it to become effective.

6.14 Rights of Set-Off

The law expressly provides for the fact that the opening of the insolvency procedure does not affect the right of any creditor to claim the set-off of its receivable with a debtor against it, when the conditions provided by the law in the matter of legal set-off are met at the procedure opening date.

In respect of the netting agreement, the law does not forbid the conclusion of such an agreement, however, it does require that certain specific conditions shall be met.

6.15 Failure to Observe the Terms of Agreements

In the event the debtor company fails to fulfil its obligations as per the terms of an agreed restructuring plan, the bankruptcy procedure will be declared.

The bankruptcy application for non-compliance with the reorganisation plan can be formulated by any of the creditors or by the judicial administrator.

In the event of bankruptcy after confirmation of a reorganisation plan, the holders of receivables participate in the distributions with the receivables recorded in the final consolidated table. As regards the guarantees provided for the fulfilment of the obligations assumed by the reorganisation plan, they will remain valid in favour of the creditors for the payment of the amounts due according to the reorganisation plan.

The creditors usually do not have a direct implication in the restructuring plan.

6.16 Existing Equity Owners

Existing equity owners cannot receive or retain any ownership or other property on account of their ownership interests unless all the other debts are paid.

7. Statutory Insolvency and Liquidation Proceedings

7.1 Types of Voluntary/Involuntary Proceedings

Romanian law provides two voluntary and facultative procedures for preventing insolvency, namely the procedure of restructuring agreement and the procedure of arrangement with creditors, and insolvency procedures for profes-

sionals, administrative and territorial units and natural persons.

As regards the insolvency proceedings, there is a distinction between the simplified insolvency procedure (where the debtor enters directly into bankruptcy) and the general insolvency procedure (which comprises the observation period and the subsequent entering into the reorganisation procedure in the event a reorganisation plan is confirmed and, as the case may be, into bankruptcy in the event the reorganisation plan fails). The main advantages of the reorganisation procedure are the increase of the degree of satisfaction of the creditors, as well as saving of the business and the jobs within the debtor company.

An insolvency procedure may be opened by a court of law at the debtor's request (voluntary) or at the request of one or several creditors (involuntary). In what regards the procedures for prevention of insolvency, the request may be filed by the debtor.

Bankruptcy

Bankruptcy is ordered either at the same time as the opening of the procedure – in the event specific conditions provided by the law for the simplified procedure are met – or after an observation period, as a result of exceeding the term for proposal of the reorganisation plan or in the event the plan fails.

The debtor may initiate the insolvency procedure in the event the insolvency state is imminent, and such procedure shall be initiated if the debtor is in insolvency and has certain, liquid and due receivables of over RON50,000 and outstanding for more than 60 days.

One or more creditors may also file a claim for opening the procedure in the event the creditors hold a certain, liquid and due debt against the debtor, which is higher than RON50,000 and outstanding for more than 60 days, and the debtor is in payment default.

For professionals, the court may order direct entry into bankruptcy, without any observation period, in the event the company has not presented the accounting documents, it has been previously dissolved, the administrator cannot be found or in the event the registered office no longer exists or no longer corresponds with the address mentioned in the public registries.

Provided that the general procedure is opened, and the observation period is conducted, bankruptcy may be ordered if a reorganisation plan is not submitted within the term established under the law or if such plan was proposed and has not been observed.

Receivables

Receivables are calculated with reference to the date of opening the insolvency procedure, in the national currency. Creditors shall submit statements of receivables to the court and to the insolvency administrator/judicial liquidator. Recognition and assessment of the receivables will be performed by the insolvency administrator/judicial liquidator. Only the receivables which have arisen prior to the date of opening of the insolvency procedure will be registered with the body of creditors. The debtor, the creditors or any other interested party may challenge the preliminary table of receivables (drafted by category of receivables).

After entering into bankruptcy, within the term provided under the law, creditors may request that the receivables which have arisen after

the opening date of the insolvency procedure (however before the date the debtor entered into bankruptcy) be registered with the body of creditors.

In the insolvency procedure, there are specific terms regulated under the law, such as: a term for the submission of the statement of claim (as established by the court by means of the decision for opening the procedure), and the term of one year established for the observation period. In what regards the expedited procedures, the insolvency law regulates the simplified procedure by which the debtor enters directly into bankruptcy, provided that certain requirements are met.

Receivables may be assigned on the conditions provided by the Romanian Civil Code; notification of any such assignment will be made to the Electronic Archive for Security Interests in Movable Property for opposability against third parties.

Enforcement Measures

As per the relevant law, all the judiciary, extrajudiciary actions or enforcement measures for recovery of the receivables against the debtor's estate are suspended during the insolvency proceedings. All enforcements against the debtor shall be lawfully suspended.

In the event the lifting of the administration right has not been ordered, the debtor may operate its own business. In such case, the insolvency practitioner supervises the current operations, and for the operations which exceeds the ordinary business it is necessary the approval of the creditors' committee. In the event the court orders the lifting of the administration right, the business will be managed directly by the insolvency practitioner, and the debtor no longer holds any control thereof.

Once the debtor is in bankruptcy, the judicial liquidator is in control of the entire business.

The insolvency administrator may maintain or unilaterally terminate the ongoing agreements. In the event of an unilateral termination of the agreement, the contracting party shall be entitled to indemnities (however, the indemnity mechanism is not being very clearly regulated).

The law expressly states that opening the insolvency procedure does not affect the right of any creditor to claim the set-off of its receivable with the one of the debtor against it, in the event the conditions provided by the law in the matter of legal set-off are met at the opening date of the procedure.

In what regards the netting agreement, the law does not forbid the conclusion of such an agreement, but it requires that certain specific conditions be met.

Proceedings

The insolvency procedure is characterised by transparency. Insolvency practitioners shall submit monthly reports to the case file, in particular, regarding the debtor's business activity and the payments made, as well as publishing such reports in the Insolvency Procedure Bulletin.

In the reorganisation period, the amounts obtained by the debtor will be distributed as per the confirmed reorganisation plan. In bankruptcy, the amounts obtained from the sale of the debtor's assets are distributed pursuant to the legal order depending on the categories of creditors. In total, there are ten categories:

- procedure expenses and duties;
- credits granted after the opening of the procedure;
- salaries;
- current receivables arising after the procedure opening date;
- budgetary receivables;
- support obligations or allowances;
- amounts necessary for the support of debtor's natural person and family;
- bank credits, deliveries of products, provisions of services, rents;
- other simple contract receivables; and
- subordinated receivables.

The procedure is closed either when the reorganisation plan has been executed or when there are no longer any assets to be sold.

7.2 Distressed Disposals

Procedures for the sale of assets or the business are authorised by the creditors' meeting and negotiated and executed by the insolvency practitioner. If the debtor's right of administration has not been lifted, the sale is performed by the special administrator under the supervision of the insolvency administrator.

A purchaser of assets sold in such procedure acquires good title, "free and clear" of claims and liabilities asserted against the company. However, in principle, the sale does not change the quality of the ownership. More precisely, it does not strengthen the title in the event there is any defect.

Secured or unsecured creditors may bid for the company's assets. The law even allows the adjudication of the assets on the account of the receivables, provided that the preference order set forth by the law is observed.

It is possible to effectuate pre-negotiated sales transactions following the commencement of a statutory procedure.

7.3 Organisation of Creditors or Committees

Creditors are divided into five classes, as follows:

- secured;
- salary;
- budgetary;
- simple contract receivables of the suppliers essential for the debtor's activity; and
- the other simple contract receivables.

Within the procedure there is a creditors' meeting, comprised of the creditors registered with the body of creditors. The creditors' meeting votes on a creditors' committee formed of three or five creditors from the first 20 creditors, depending on the value of the receivables. This creditors' committee has powers and duties of representation of the creditors, the activity of the members of the committee not being remunerated.

8. International/Cross-Border Issues and Processes

8.1 Recognition or Relief in Connection With Overseas Proceedings

A foreign procedure may be recognised in Romania if certain conditions are met, namely:

- the foreign procedure shall be a collective and public procedure in which the assets and the activity of the debtor are subject to the control or supervision of a foreign court;
- the person who requests the recognition of the foreign procedure shall manage the reor-

ganisation or the liquidation of the debtor's assets and activity or act as a representative of the procedure; and
- there must be reciprocity regarding the effects of the foreign decisions between Romania and the state that delivered the decision by which the foreign procedure was opened.

8.2 Co-ordination in Cross-Border Cases

All reciprocity agreements concluded between Romania and other states also apply to the insolvency procedures. Internal legislation includes regulations regarding cross-border insolvency.

8.3 Rules, Standards and Guidelines

Depending on the date of opening of the procedure, in principle, the provisions of EC Regulation 1346/2000 or of Regulation 848/2015 on insolvency procedures are applicable.

8.4 Foreign Creditors

There is no different treatment for foreign creditors in insolvency procedures or prevention of insolvency procedure that are opened within the territory of Romania.

8.5 Recognition and Enforcement of Foreign Judgments

As a general rule, foreign judgments are recognised in Romania based on a prior judicial control procedure. Several conditions need to be met, namely:

- the foreign judgment needs to be final according to the law of the state where it was pronounced;
- the judgment was delivered by the court of competent jurisdiction;
- there is reciprocity with respect to the effects of foreign judgments between Romania and the state of the court which delivered the judgment; and
- if the judgment was delivered without the losing party being present, the party must have been legally summoned with the petition filed in court and for the final hearing to have the possibility to defend itself and to file an appeal.

Romanian law also states the grounds for non-recognition:

- the judgment is obviously against the Romanian private international law public order;
- the judgment was delivered in an area of law in which the parties cannot freely dispose of their rights, with the exclusive purpose of evading the applicable law according to the Romanian private international law;
- the dispute between the same parties was already solved by a judgment (even if not final) delivered by a Romanian court or it is pending before Romanian courts;
- the judgment cannot be reconciled with a prior judgment delivered abroad, which is able to be recognised in Romania;
- Romanian courts had exclusive jurisdiction; and
- the judgment can be appealed in the state where it was delivered.

Once a foreign judgment is recognised based on the above mentioned, the judgement can be enforced. However, the judgment needs to be enforceable in accordance with the law of the state where it was delivered.

For the recognition and enforcement of judgments in civil and commercial matters within the European Union, the Regulation (EU) No 1215/2012 is applicable, meaning that a judgment given in one EU country is recognised in Romania without the need for any special procedure.

9. Trustees/Receivers/Statutory Officers

9.1 Types of Statutory Officers

There are various types of statutory officers who may be appointed in proceedings, namely the administrator in an arrangement with the creditors, the ad hoc proxy or the insolvency administrator/judicial liquidator are appointed from the insolvency practitioners.

In a procedure of insolvency of a natural person, the following may be appointed as liquidators:

- insolvency practitioners;
- court enforcement officers;
- attorneys at law; and/or
- notaries.

9.2 Statutory Roles, Rights and Responsibilities of Officers

The ad hoc proxy is appointed for the identification of solutions for reaching an understanding with the creditors. The administrator, in an arrangement with the creditors, prepares the creditors' table and elaborates, together with the debtor, the arrangement project which would provide for the restructuring of the debtor's business. The insolvency administrator drafts the creditors' table, supervises the insolvency procedure and drafts the monthly activity reports in which he or she presents the debtor's activity or, as the case may be, directly controls whether the debtor's administration right has been lifted. The insolvency administrator may propose a reorganisation plan, may unilaterally terminate the ongoing agreements, and/or may appoint specialists in the procedure. The judicial liquidator manages the debtor's activity and directly manages the procedure of liquidation of the assets.

9.3 Selection of Officers

In case of insolvency of professionals, the insolvency administrator/judicial liquidator is appointed by the creditors and, subsequently, confirmed by the court of law. The practitioner is appointed from those who have submitted an offer to the case file, depending on the complexity of the procedure, expertise and capacity to manage the procedure in particular. In case of insolvency of natural persons, the appointment is random.

The insolvency administrator has powers and duties of supervision of the debtor's activity, supervising the managers and the management. If lifting the administration rights has been ordered, the management of the company belongs to the insolvency administrator, who has all the powers and duties.

The law regulates several hypotheses in which an insolvency practitioner may not fulfil the role of insolvency administrator/judicial liquidator. In particular, such refer to situations in which the practitioner has had prior relations with the debtor during a period of two years prior to the opening of the insolvency procedure. Also, an insolvency practitioner who is a former judge may not be appointed as administrator/liquidator in the area of the court of law in which he has been performed its activity during the past three years.

Creditors, statutory administrators or managers may not be appointed as insolvency administrators/liquidators of a company.

In order for a person to fulfil the quality of insolvency practitioner, there are long-term higher-education studies in law or economic sciences which shall be completed, and at least three years' experience in the legal or economic area.

Authorisation thereof to act as an insolvency practitioner is also required.

10. Duties and Personal Liability of Directors and Officers of Financially Troubled Companies

10.1 Duties of Directors

The managers have obligations to the insolvent company according to their functioning status. The manager, or any other person who has contributed to the occurrence of the insolvency state, may be held responsible to the creditors if the court takes a decision stating their liability.

The existence of the state of insolvency is determined by the syndic judge when the opening of the procedure is ordered. Subsequently, the first report prepared by the insolvency administrator/judicial liquidator describes the state of the company and the causes that have generated the insolvency, pointing out the persons responsible (if it is the case).

The managers of the company do not have a direct relationship with the creditors, but with the debtor. The managers are held liable for the activity they have performed and, as well as any other persons who have contributed to the company's insolvency, are responsible to all creditors for the state of insolvency.

The obligations assumed by bylaws/agreement by the owners/shareholders/company affiliates/subsidiaries are maintained, in principle, including after entry into insolvency. The manager or any other person who has contributed to the occurrence of the insolvency state may be made responsible to the creditors. The law concretely provides the cases that may entail the personal responsibility of these persons in order to cover the receivables of the creditors registered with the body of creditors. The action can be brought by the judicial administrator/liquidator, the president of the creditors' committee, or by a creditor holding 30% of the total registered debt.

Directors can be subject to other sanctions under applicable criminal or civil law or pursuant to disqualification or other similar proceedings, subject to the conditions provided above.

10.2 Direct Fiduciary Breach Claims

Creditors may request the entailing of the direct liability of the persons who have caused the insolvency state.

11. Transfers/Transactions That May Be Set Aside

11.1 Historical Transactions

Romanian law concretely provides for several situations in which transactions concluded before the opening of the insolvency procedure may be annulled if they have disadvantaged the debtor. The law mentions:

- gratuitous transactions;
- operations in which the services offered by the debtor are obviously disproportionate;
- transactions concluded with the intention of stealing assets from the debtor's estate or of hiding or delaying the insolvency state;
- anticipated payments of payable debts after the date of opening of the procedure;
- transfer of ownership of assets in order to pay off a debt of the creditor at a higher value than the creditor could obtain in the bankruptcy procedure; and
- transactions by which a preference is created in favour of a simple contract creditor.

The law also provides for the possibility of annulment of transactions concluded up to two years before the opening of the procedure with a person who had shareholdings or controlled the company, or with a co-owner of a common asset.

11.2 Look-Back Period

As a rule, transactions and operations concluded up to two years before the date of opening of the insolvency procedure are subject to verification.

11.3 Claims to Set Aside or Annul Transactions

Claims for annulment of transactions may be filed by the insolvency administrator, the creditors' committee or by a creditor representing more than 50% of the total body of creditors.

Such claims may be filed in both restructuring and insolvency proceedings and are exempted from stamp duties if registered by the insolvency practitioner.

Contributed by: Stan Tîrnoveanu, Andreea Macașoi, Alexandru Iorgulescu and Laura Retegan,
Zamfirescu Racoți Vasile & Partners Attorneys At Law

Zamfirescu Racoți Vasile & Partners Attorneys At Law has 12 lawyers in its insolvency department, active mainly in banking litigation and debt recovery. The team notably acts for banks in insolvency procedure cases, and for large companies involved in the recovery of receivables. It advises both debtors and creditors throughout the insolvency procedure, starting with off-court arrangements, pre-packed procedures, observation period, reorganisation, and bankruptcy. The team assists and/or represents them in specific claims and also in related actions, including objections to the decision of the creditors' meeting, measures ordered by judicial liquidators, annulment claims, objections to debt claims, liability claims submitted against former debtors' administrators, and fraud matters. The team also has significant experience in debt recovery.

Authors

Stan Tîrnoveanu is a senior partner and one of the founders of Zamfirescu Racoți Vasile & Partners Attorneys at Law. He leads the restructuring and insolvency practice as well as the banking litigation practice. Mr Tîrnoveanu has more than 30 years' experience as a lawyer and over 20 years' experience as an insolvency practitioner, with broad expertise in representing clients in insolvency and bankruptcy, debt recovery and dispute resolution matters. He acts for both creditors and debtors in the insolvency procedure and covers a wide array of financing and funding transactions, trade finance facilities, collateral systems and credit securities issues.

Andreea Macașoi is specialised in civil and commercial litigation, with a focus on disputes in the areas of insolvency, commercial contracts, real estate, expropriation, and banking. Andreea has a notable reputation for managing complex projects related to the recovery of bad loans in insolvency and in enforcement proceedings, including cross-border mandates or mandates referring to the enforcement of shares owned by natural or legal persons. Further to her experience in the insolvency area, Andreea advises clients on insolvency matters of group companies, the legality of the reorganisation plan or the identification of the optimum methods for the recovery of secured receivables.

Contributed by: Stan Tîmoveanu, Andreea Macașoi, Alexandru Iorgulescu and Laura Retegan,
Zamfirescu Racoți Vasile & Partners Attorneys At Law

Alexandru Iorgulescu specialises in financial and banking law, bills of exchange law, insolvency and enforcement, and insurance law. Alexandru has more than 12 years of experience in the insolvency field, taking part in a broad range of insolvency-related disputes while also providing support for both debtors and creditors in non-contentious and restructuring matters. Alexandru co-chairs the insurance law practice, representing the leading companies on the Romanian market in many disputes that have as their object high-value damages, completed by total or partial exoneration from the payment of indemnities.

Laura Retegan has over 15 years of professional experience in litigation, focusing on civil litigation, commercial and banking disputes, reorganisation and insolvency. Her area of expertise also includes a wide range of disputes with professionals, in the field of civil or corporate law, disputes arising from enforcement procedures, contentious administrative procedures, as well as projects concerning the referral to the Court of Justice of the European Union by the preliminary ruling procedure. Laura has a PhD degree in law from the Faculty of Law, Babeș-Bolyai University.

Zamfirescu Racoți Vasile & Partners

12 Plantelor Street
023974 Bucharest
District 2
Romania

Tel: +40 21 311 0517/18
Fax: +40 21 311 0519
Email: office@zrvp.ro
Web: www.zrvp.ro

ZAMFIRESCU RACOȚI VASILE & PARTNERS
ATTORNEYS AT LAW

Trends and Developments

Contributed by:
Stan Tîrnoveanu and Alexandru Iorgulescu
Zamfirescu Racoți Vasile & Partners Attorneys At Law **see p.30**

Overview of the Insolvency and Reorganisation Market

In addition to the impact of the COVID-19 pandemic which continued to be felt, the energy crisis which debuted in late 2021 doubled by the rising inflation brought new uncertainties and challenges for Romanian companies. In the first two quarters of 2022, more than 3,500 companies entered insolvency. Although the increase compared to the similar period of 2021 is of just 16%, the upward trend is maintained. In the first half of 2022, 62,567 companies stopped operating, an increase compared to the same period last year.

The most affected companies are the ones operating in the construction sector, followed by retail where profit margins are usually low. There are also worrying developments in the manufacturing industry, which took the hardest blow from the rapid increase in energy and natural gas prices. Companies that have business partners in Ukraine are likely to experience difficulties in continuing the contracts or recovering the debts due to the ongoing war in Ukraine.

The state of alert expired in Romania on 8 March 2022 and with it the temporary procedural rules that amended the insolvency law. Law No 220/2022 extended for a period of one year some of the provisional measures, like the suspension of the statutory administrators' obligation to request the opening of the insolvency procedure, or the extension of the duration of the reorganisation plan up to five years.

In July 2022 Law No 216/2022 for the amendment of insolvency law 85/2014 entered into force, by which Romania implemented the EU Directive 2019/1023, offering companies new restructuring frameworks aimed at preventing insolvency.

Energy Crisis, Inflation and State Support.

Since the beginning of the year, inflation has been on a continuous rise due to the increase in the prices of fuel, electricity, and natural gas. The National Bank of Romania projects an inflation of 15.1% for the end of the third quarter of this year and 13.9% for the end of the year. The most important stress was felt by companies where utilities (electricity, natural gas) represent a higher percentage in the production cost.

Against the soaring increase of gas and electricity prices, the Romanian State intervened in autumn 2021 (Emergency Ordinance No 118/2021) with temporary legislation (applicable for the cold season) oriented towards capping energy prices and granting partial compensation by the State of electricity and natural gas bills. Although mainly aimed at household consumers, these measures were also applied to companies. However, insolvent companies were excluded from this first support scheme, a questionable solution that caused them additional stress.

The persistence of inflationist pressure coupled with the war in Ukraine determined authorities to adopt additional measures to limit the increase of electricity and natural gas bills on the population and companies. A new Emergency Ordi-

nance (No 27/2022) was issued for the capping of price for final consumers, a measure that also benefited the insolvent companies.

Another widely applicable inflation mitigation measure for both individuals and companies was the state-supported reduction of fuel prices by RON0.50 per litre applicable from July 2022.

Significant Sectoral Developments

Industry

The manufacturing industry, already affected by the financing difficulties and the supply chain challenges, felt the full shock of the increase in utility prices. The number of new insolvencies in this sector in 2022 remains very high (339 companies) by reference to the number of active companies in this industry. A few large factories, such as the only alumina producer in Romania, the most important producer of fertilisers used in agriculture, and a large chemical plant decided to temporarily stop production in late 2021 and the first half of 2022, but no major players have entered insolvency so far.

Construction

Although an increase in volume is reported in the first six months of 2022, the construction sector is steadily slowing down. Similar to 2021, the largest number of new insolvency procedures was registered in the construction sector (710). The main challenge remains the increase of prices for building materials but the surge of interest rates for both individuals and companies (which in turn causes credit to drop) is of more and more concern. While the persistence of the events in Ukraine and their consequences may pose additional problems, the receipt of the first tranches of PNRR (National Recovery and Resilience Plan) from the European Commission and the state incentive programmes, including "The New House" (which replaced the "First House" programme), the increase in the guarantee ceiling granted by the State, and the raise of the threshold for diminished VAT tax on the purchase of a new home to EUR140,000 are welcome breaths of air for this sector.

Agriculture

Agriculture is a sector in which investments accelerated in 2022 against the background of a year with record productions in 2021. So far, 2022 has proved to be a challenging year for agricultural businesses as the general drought affected an area of more than 750,000 hectares. In this context, there is an important pressure from input suppliers, especially for the medium and small agricultural holdings that could face an increased number of insolvencies. If the State would grant the compensation requested by the farmers, the pressure would decrease.

Insurance

In February 2022 one of the largest insurance companies and the biggest player on the civil liability insurance market – City Insurance – entered bankruptcy. The effects were felt by the entire market, the most important being the increase of insurance policy prices, a situation that began to balance due to competition and the entry of new players on the market.

Amendments to Insolvency Law 85/2014

Law 216/2022 brought important changes to insolvency Law 85/2014 as it introduced totally new concepts and instruments while significantly changing the framework of the preventive measures.

One of the new concepts is the state of difficulty, generated by any circumstance that temporarily affects the debtor's business and that produces a real and serious threat to the debtor's present or future capacity to pay its debts. The difficulty

can be generated by any events and factors: internal, such as the loss of an important contract for the debtor's activity, or external, such as changes in the economic environment. The state of difficulty must be proven by the debtor to prevent an abusive use of the prevention procedures.

Also established by the amending law is an early warning mechanism that companies can call upon, as a kind of pre-test if there is a risk of insolvency, with the State providing the necessary logistics for this check.

The law regulates two preventive procedures, the restructuring agreement, and the arrangement with creditors, which are partially collective and minimally judicial procedures, in which the debtor remains in possession and carries on its activity on the principle of business as usual. In both cases the agreement/plan can affect only a part of the creditors, the rule being that they do not produce effects for the creditors that are not envisaged by the provisions of the preventive measures.

The restructuring agreement procedure, which is a novelty, is a confidential negotiation-based procedure designed for debtors that have not yet experienced severe difficulties in observing their obligations and who do not require the suspension of the enforcement procedures initiated against them, as the approval of a restructuring agreement does not generate an ex lege suspension of the enforcements on the debtor's estate.

Specific to the restructuring agreement is the out-of-court negotiation between the debtor and its creditors, the procedure reaching the court at the end, when the agreement is confirmed by the syndic judge if it meets the requirements of fair treatment.

The arrangement with creditors was regulated by the former version of the insolvency law but is profoundly modified by the new law in accordance with the principles of the Directive. The arrangement with creditors differs from the restructuring agreement primarily from a procedural point of view, as it is more formal, and it begins before the court that verifies the requirements for opening the procedure. If the request to open the procedure is allowed, all enforcement procedures against the debtor are suspended for four months, a period that can be extended to 12 months. The plan is drafted and negotiated after the syndic judge opens the procedure. The syndic judge is also responsible for the homologation of the plan, which can be decided despite the opposition of some of the creditors. Compliance with the provisions of the restructuring plan/arrangement with creditors leads to discharge of debts, which happens under certain conditions and with the observance of a fair treatment.

Trends in the Insolvency and Restructuring Market

It is expected that 2023 will continue to see a rise in the number of insolvency cases compared to 2022 amid the new challenges posed by the energy crisis, the war in Ukraine and overall deceleration of investments due to rising interest rates. We can also presume that a fair number of businesses that rely on small profit margins will be affected by the increase in utilities and fuel costs. However, we do not expect to see a steep increase in the number of insolvencies considering that Romania maintains a general trend of economic growth. According to latest World Bank estimates the Romanian economy should register a 4.6% increase this year.

Taking into consideration that the new provisions regarding the preventive measures have

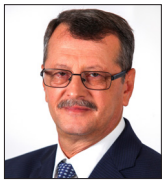
Contributed by: Stan Tîmoveanu and Alexandru Iorgulescu,
Zamfirescu Racoți Vasile & Partners Attorneys At Law

only recently entered into force, it will take some time for the beneficiaries to get acquainted with and understand the advantages of the new instruments. We do not expect an avalanche of cases in the following year, as of July 2022 only a dozen such requests being registered.

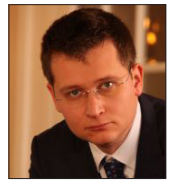
Contributed by: Stan Tîrnoveanu and Alexandru Iorgulescu,
Zamfirescu Racoți Vasile & Partners Attorneys At Law

Zamfirescu Racoți Vasile & Partners Attorneys At Law has 12 lawyers in its insolvency department, active mainly in banking litigation and debt recovery. The team notably acts for banks in insolvency procedure cases, and for large companies involved in the recovery of receivables. It advises both debtors and creditors throughout the insolvency procedure, starting with off-court arrangements, pre-packed procedures, observation period, reorganization, and bankruptcy. The team assists and/or represents them in specific claims and also in related actions, including objections to the decision of the creditors' meeting, measures ordered by judicial liquidators, annulment claims, objections to debt claims, liability claims submitted against former debtors' administrators, and fraud matters. The team also has significant experience in debt recovery.

Authors



Stan Tîrnoveanu is a senior partner and one of the founders of Zamfirescu Racoți Vasile & Partners Attorneys at Law. He leads the restructuring and insolvency practice as well as the banking litigation practice. Tîrnoveanu has more than 30-year experience as a lawyer and over 20-year experience as an insolvency practitioner, with broad expertise in representing clients in insolvency and bankruptcy, debt recovery and dispute resolution matters. He acts for both creditors and debtors in the insolvency procedure and covers a wide array of financing and funding transactions, trade finance facilities, collateral systems and credit securities issues.



Alexandru Iorgulescu specialises in financial and banking law, bills of exchange law, insolvency and enforcement and insurance law. Alexandru has more than 12 years of experience in the insolvency field taking part in a broad range of insolvency related disputes while also providing support for both debtors and creditors in non-contentious and restructuring matters. Alexandru co-chairs the insurance law practice, representing the leading companies on the Romanian market in many disputes that have as their object high-value damages, completed by total or partial exoneration from the payment of indemnities.

Zamfirescu Racoți Vasile & Partners

12 Plantelor Street
023974 Bucharest
District 2
Romania

Tel: +40 21 311 0517/18
Fax: +40 21 311 0519
Email: office@zrvp.ro
Web: www.zrvp.ro

ZAMFIRESCU RACOȚI VASILE & PARTNERS
ATTORNEYS AT LAW

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com