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# Insolvency/bankruptcy



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European Judicial Network  
(in civil and commercial  
matters)

## 1 Who may insolvency proceedings be brought against?

The procedures provided for by Law No 85/2014 on insolvency prevention and insolvency proceedings apply to entrepreneurs as defined in Article 3(2) of the Civil Code, except for those whose insolvency is governed by special rules. (Article 3 of Law No 85/2014 on insolvency prevention and insolvency proceedings).

Natural persons may be subject to insolvency proceedings governed by Law No 85/2014 on professional debt. As regards personal debt, the procedure provided for by Law No 151/2015 on insolvency proceedings in respect of natural persons may be applied.

Insolvency proceedings do not apply to pre-university and university educational establishments and institutions and the bodies indicated in Article 7 of Government Order No 57/2002 on scientific research and technological development, approved with amendments by Law No 324/2003, as amended and supplemented (Article 2(4) of Law No 85/2014).

## 2 What are the conditions for opening insolvency proceedings?

A. If the proceedings are opened at the request of a debtor, there must be a state of insolvency (i.e. the funds available are not sufficient to meet a claim that is certain, liquid and due, of over RON 50 000); if proceedings are opened at the request of a creditor, there must be a claim that is certain, liquid and due, of over RON 50 000, and a state of insolvency (which is presumed to have occurred if the debt is still not paid 60 days after the due date).

B. Preventive procedures (restructuring agreement or coming to an arrangement with creditors) apply to debtors who are struggling (Article 5(26)(2) of Law No 85/2014) but not insolvent. The debtor may request the initiation of such proceedings and must prove that they are struggling by means of a report drawn up by the administrator of an arrangement with creditors.

## 3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

The debtor's wealth consists of all assets and property rights, including those acquired during the insolvency proceedings, which can be made subject to enforced recovery (*executare silită*) under the Code of Civil Procedure (Article 5(5) of Law No 85/2014).

## 4 What powers do the debtor and the insolvency practitioner have,

## respectively?

A. After the insolvency proceedings have been opened, a special administrator (*administrator special*) and an insolvency practitioner (*practician în insolvență*) are appointed; depending on the type of proceedings, the insolvency practitioner is either a court-appointed administrator (*administrator judiciar*) in a reorganisation under the supervision of the court, or a court-appointed liquidator (*lichidator judiciar*) if the company is to be wound up (*faliment*).

### The special administrator

The special administrator is a natural or legal person appointed by the general meeting of the debtor's shareholders, partners or members, who is empowered to represent their interests in the proceedings and, if the debtor is allowed to manage their own affairs, to perform necessary administrative acts in the debtor's name and on their behalf (Article 5(4) of Law No 85/2014).

The special administrator has the following duties:

- (a) to take part, as the debtor's representative, in the trial of actions of the kind referred to in Articles 117-122 or of actions resulting from non-compliance with Article 84;
- (b) to file objections under the procedure regulated by this law;
- (c) to propose a reorganisation plan;
- (d) after a plan has been confirmed, and provided the debtor has not been deprived of their right to manage their affairs, to conduct the debtor's affairs under the supervision of the court-appointed administrator;
- (e) after winding up proceedings have begun, to participate in the taking of the inventory and sign the record, to receive the final report and the financial statement, and to take part in the meeting convened to settle any objections and approve the report;
- (f) to receive notification of the closure of proceedings.

After the debtor is deprived of their right to manage their affairs, they are represented by the court-appointed administrator or liquidator, who also conducts the debtor's business; the special administrator's task is then limited to representing the interests of the shareholders, partners or members (Article 56 of Law No 85/2014).

### Court-appointed administrator (administrator judiciar)

A court-appointed administrator may be a natural or legal person (including the legal person's representative), and must by law be an insolvency practitioner. The main duties of the court-appointed administrator are:

- (a) to review the debtor's economic situation and the documents submitted, to prepare a report proposing either the commencement of simplified proceedings or the continuation of the monitoring period as part of the ordinary proceedings, and to submit the report for approval by the delegated judge (*judecător-sindic*) within a deadline set by the judge, which cannot exceed 20 days from the administrator's appointment;
- (b) to review the debtor's business and to prepare a thorough report setting out the causes and circumstances that led to the state of insolvency, specifying any potential preliminary evidence or indications regarding the persons to whom that state may be imputable and the presence of grounds for holding them liable, and exploring any real possibility of reorganising the debtor's business or explaining the reasons why reorganisation would not be possible, and to enter the report in the case file within a deadline set by the delegated judge, which may not exceed 40 days from the administrator's appointment;
- (c) if the debtor has failed to meet their obligation to provide their accounting records within the legal time-limits, to prepare those records, and if the accounting records have been provided by the debtor, to check, correct and complete them;
- (d) to prepare a plan for the reorganisation of the debtor's business, depending on the content of the report referred to in point (a);

(e) to supervise the debtor's asset management operations;

(f) to conduct the debtor's business, in whole or in part, in the latter case observing the delegated judge's express specifications regarding the administrator's duties and regarding the conditions for the execution of payments from the debtor's asset account;

(g) to convene, chair and carry out secretarial tasks during meetings of creditors or of shareholders, partners or members of a debtor that is a legal person;

(h) to file actions for the annulment of fraudulent acts or transactions on the part of the debtor that are performed to the detriment of creditors' rights, and of certain transfers of assets, business transactions concluded by the debtor and guarantees contracted by the debtor that are likely to undermine creditors' rights;

(i) to notify the delegated judge, as a matter of urgency, if the administrator finds that the debtor holds no assets or if they are insufficient to cover the legal expenses;

(j) to terminate certain contracts entered into by the debtor;

(k) to verify claims and, where applicable, make objections to them, to notify the creditors where the claims have not been admitted or have been only partially admitted, and to draw up the lists of claims;

(l) to recover claims, to pursue the recovery of claims with respect to the debtor's assets or sums of money transferred by the debtor before the proceedings were opened, and to file and pursue actions seeking recovery of claims held by the debtor, for which purpose they may engage the services of lawyers;

(m) to conclude compromises, discharge debts, discharge guarantors, and to waive collateral, subject to confirmation by the delegated judge;

(n) to inform the delegated judge of any issue that would require a decision by the latter;

(o) to draw up an inventory of the debtor's assets;

(p) to order the evaluation of the debtor's assets, to be completed by the date set for the submission of the final list of claims;

(q) to send a notice for publication in the Bulletin of Insolvency Proceedings (BPI) with regard to the entry of the evaluation report in the case file, within two days of the entry.

The delegated judge may by decision (*încheiere*) charge the court-appointed administrator with any other duties, in addition to those listed under paragraph 1, except for those that are by law within the judge's exclusive jurisdiction.

The court-appointed administrator will submit a monthly report describing how they have performed their duties, including those relating to the follow-up of operations carried out on the basis of prior approval, justifying the expenditure incurred in the administration of the procedure and any other expenses paid out of the debtor's assets and, where applicable, detailing progress with the inventory. The report will include information regarding compliance with fiscal obligations, obtaining or renewing approval for carrying out the activity, documents drawn up by the supervisory bodies and the remuneration of the court-appointed administrator, setting out how this remuneration is calculated (Article 59(1) of Law No 85/2014).

In order to accomplish their duties, the court-appointed administrator may engage the services of professionals such as lawyers, accountants, valuers or other specialists. No person may be designated in accordance with paragraph (1) if they are bound by a contract that could cause a conflict of interest; in this case, they must stand down or they may be challenged pursuant to Articles 43 and 44 of Law No 134/2010 on the Code of Civil Procedure, republished, as amended and supplemented (Article 61(2)). The court-appointed administrator and any of the creditors may put forward objections against the valuation reports prepared in the case.

Court-appointed liquidator (*lichidator judiciar*)

If the delegated judge issues a winding-up order, they shall appoint a liquidator to apply it. The duties of a court-

appointed administrator cease on the date when the delegated judge establishes the duties of the liquidator. The main duties of the court-appointed liquidator are:

- (a) to review the business of the debtor with regard to whom the simplified procedure is opened, with reference to the factual situation, and to prepare a thorough report on the causes and circumstances that led to the insolvency, specifying the persons to whom the state of insolvency may be imputable and the presence of grounds for holding them liable;
- (b) to conduct the debtor's business;
- (c) to file actions for the annulment of fraudulent acts and transactions performed by the debtor to the detriment of the creditors' rights, and of transfers of ownership under property law, business transactions concluded by the debtor and grounds of preference established by the debtor that are likely to harm the creditors' rights;
- (d) to apply seals, to draw up an inventory of the assets and to take the appropriate action for their conservation;
- (e) to terminate certain contracts entered into by the debtor;
- (f) to verify claims and, where applicable, to make objections to them, to notify the creditors where the claims have not been admitted or have been only partially admitted, and to draw up the lists of claims;
- (g) to pursue the recovery of claims with respect to the debtor's assets resulting from the transfer of assets or sums of money by the debtor before the proceedings were opened, to recover claims, and to file and pursue actions seeking recovery of the claims held by the debtor, for which purpose they may engage the services of lawyers;
- (h) to receive payments on the debtor's behalf and to enter them in the debtor's asset account;
- (i) to sell assets held by the debtor in accordance with the present law;
- (j) subject to confirmation by the delegated judge, to conclude compromises, discharge debts, discharge guarantors, and waive collateral;
- (k) to inform the delegated judge of any issue that would require a decision by the latter; (l) to perform any other duties imposed by decision of the delegated judge.

B. In the procedure for coming to an arrangement with creditors (*concordat preventiv*), the debtor takes part in the procedure through their legal or agreed representatives.

The remit of the administrator of an arrangement with creditors (*administrator concordatar*) is:

- (a) to draw up the report on the debtor's situation of financial difficulty, the list of claims and the list of claims that are pending trial;
- (b) to draw up or to assist the debtor in drawing up the restructuring plan, as appropriate;
- (c) to assist the debtor in negotiating the restructuring plan or, at the debtor's request, to negotiate the restructuring plan, and to take action in order to settle amicably any dispute arising between the debtor and the creditors or between creditors;
- (d) to request the delegated judge, where appropriate, to verify the legality of the establishment of categories and sub-categories of claims;
- (e) to convene, where appropriate, meetings of creditors holding affected claims and to draw up the minutes thereof;
- (f) to supervise the fulfilment of the obligations taken on by the debtor in the restructuring plan;
- (g) to draw up quarterly reports on their activities and those of the debtor, to enter those reports in the case file and to send them to the affected creditors;

(h) to monitor and, where appropriate, to assist the debtor in implementing the restructuring plan by any actions provided for therein or necessary for the implementation of the plan, such as: operational measures, realisation of assets, sale of the business or of a part thereof on a standalone basis;

(i) to apply to the court for the closure of the procedure for coming to an arrangement with creditors;

(j) to carry out any other duties referred to in this chapter provided for in the restructuring plan or established by the delegated judge. (Article 19 of Law No 85/2014).

## 5 Under which conditions may set-offs be invoked?

The initiation of insolvency proceedings does not affect any creditor's right to invoke a set-off of their claim against a claim held by the debtor against that creditor if the requirements laid down by law for legal set-offs are met on the day when proceedings are initiated. The set-off may also be recorded by the court-appointed administrator or liquidator. The set-off also applies to reciprocal claims arising after the initiation of insolvency proceedings.

## 6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

Ongoing contracts continue in force when the proceedings are initiated. Any clause in a contract providing for termination, deprivation of the benefit of the natural term of the contract, or early payability, on grounds of the initiation of insolvency proceedings, is null and void. The rule that ongoing contracts continue in force, and that clauses for termination or the bringing forward of obligations are null and void, is not applicable to qualified financial contracts or to bilateral netting transactions under a qualified financial contract or a bilateral netting agreement.

In order to maximise the value of the debtor's assets within a limitation period of three months from the initiation of the proceedings, the court-appointed administrator or liquidator may terminate any contract, any unexpired leases, and any other long-term contract as long as these contracts have not been performed in full or to a substantial extent by all the parties involved. When a contract is thus terminated the other party may file a claim for compensation against the debtor.

Where, within the first three months following the initiation of proceedings, a contractor files a notification requesting the court-appointed administrator or liquidator to terminate the contract, the administrator or liquidator must respond within 30 days of receipt, failing which the contract is deemed to have been terminated and the administrator or liquidator will no longer be able to require its performance.

The law also regulates the status of some particular contracts, such as those regarding the provision of utilities, leases, or master netting agreements.

## 7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

A. All court and out-of-court actions, and any measures for the forced recovery of claims against the debtor's assets are automatically suspended from the initiation of insolvency proceedings. Their rights may be exercised only within the insolvency proceedings, by applying for the admission of their claims. The initiation of the proceedings suspends any limitation periods for bringing actions.

Appeals filed by the debtor against actions initiated by a creditor before the initiation of the proceedings, and lawsuits against co-debtors or third-party guarantors shall not be subject to suspension.

B. From the date of delivery of the decision to approve the restructuring plan, individual enforcement actions against the debtor for the recovery of related debts and the limitation period for the right to apply for the enforcement of their claims are automatically suspended.

Interest rates, penalties and any other expenses shall be dealt with in accordance with the approved

restructuring plan.

## 8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

All court and out-of-court actions, and any measures for the forced recovery of claims against the debtor's assets, are automatically suspended from the initiation of insolvency proceedings.

The following are not subject to suspension:

(a) appeals filed by the debtor against actions initiated by a creditor or creditors before the initiation of the proceedings, and civil lawsuits joined to criminal prosecutions (*acțiuni civile din procesele penale*) against the debtor;

(b) court actions filed against co-debtors and/or third-party guarantors;

(c) out-of-court proceedings pending before sports commissions within sports federations operating under [The relevant laws](#) No 69/2000 on physical education and sport (*Legea educației fizice și sportului nr. 69/2000*), as subsequently amended and supplemented, concerning the unilateral withdrawal of players from individual employment contracts or civil agreements and sporting penalties applicable to such situations, and any other disputes concerning the right of players to take part in competitions.

(d) court actions to determine the existence and/or the number of claims against the debtor arising after the date of initiation of proceedings. For such claims, during the observation and reorganisation period, a request for payment may be drawn up and sent with an acknowledgement of receipt. This request will be analysed by the court-appointed administrator within 15 days of receipt, in accordance with the provisions of Article 106(1), which will apply accordingly, without these claims being included in the list of claims.

Measures ordered by the court-appointed administrator are subject to appeal.

It is worth noting that this suspension of actions applies only to lawsuits involving claims against the debtor's assets, and not to those regarding non-patrimonial rights and obligations, which continue in the relevant court.

## 9 What are the main features of the participation of the creditors in the insolvency proceeding?

A meeting is held of all the insolvent debtor's creditors.

The creditors' meeting (*adunarea creditorilor*) will be convened and chaired by the court-appointed administrator or liquidator. Known creditors will be convened by the administrator or liquidator in the cases expressly provided for by law whenever required.

Creditors are convened by a notice published in the Bulletin of Insolvency Proceedings at least five days before the meeting which must contain the agenda of the meeting. Creditors may be represented at the meeting by agents holding a specific and authentic proxy or, for public budget creditors and other legal persons, a delegating act signed by the head of unit. Except where expressly prohibited by law, creditors are also able to vote by correspondence.

Except where the law requires a special majority, the meeting of creditors can act validly provided it is attended by the holders of claims accounting for at least 30% of the total value of claims with the right to vote in respect of the debtor's assets, and the decisions of the meeting are adopted by a favourable vote expressly cast by the majority, by value of claim, of the claim holders present with the right to vote. A vote subject to conditions is deemed to be a negative vote. Creditors who cast valid votes by correspondence are also deemed to be present.

After the first meeting has been convened, the delegated judge and then the creditors may appoint a committee, which is made up, depending on the number of creditors, of three or five creditors from among those

with the right to vote, with preference claims, budgetary claims and unsecured claims in order of value. The creditors' committee (*comitetul creditorilor*) has the following remit:

(a) to review the debtor's situation and to issue recommendations to the creditors' meeting with regard to the continuation of the debtor's business and proposed reorganisation plans;

(b) to negotiate terms of appointment with the administrator or liquidator whom the creditors wish to see appointed;

(c) to read the reports prepared by the court-appointed administrator or liquidator, to review them and, where applicable, to file objections thereto;

(d) to prepare reports to be presented at the creditors' meeting in regard to the measures taken by the court-appointed administrator or liquidator and their effects, and to also propose alternative measures, where appropriate, giving reasons;

(e) to request the removal of the debtor's right to manage their affairs;

(f) to file legal actions for the annulment of certain fraudulent acts or transactions performed by the debtor to the detriment of creditors when such legal actions have not been brought by the court-appointed administrator or liquidator.

## 10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

Depending on the debtor's specific situation and on whether or not the debtor has been deprived of their right to manage their affairs, the insolvency practitioner has the following duties.

A court-appointed administrator supervises the debtor's asset management operations. They conduct the debtor's business, in whole or in part, in the latter case observing the delegated judge's express specifications regarding the administrator's duties and regarding the conditions for the execution of payments from the debtor's asset account.

They recover claims, conclude compromises, draw up the inventory, and sell assets belonging to the debtor.

The debtor may use the assets only where they have kept their right to manage their affairs and within the limits of their current business; they are supervised and controlled by the court-appointed administrator.

After winding-up proceedings have commenced, a court-appointed liquidator manages the debtor's business, terminates contracts, recovers claims, sells the assets, concludes compromises, receives payments on the debtor's account, etc. In a winding up procedure, only the court-appointed liquidator may dispose of the debtor's assets.

## 11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

All creditors whose claims are dated prior to the initiation of proceedings, with the exception of employees, whose claims are recorded by the court-appointed administrator on the basis of the accounting records, are to submit an application for the admission of their claims within a deadline set in the order initiating the proceedings, and to enclose the necessary supporting documents. All claims submitted for admission and recorded at the registry of the court will be presumed to be valid and accurate if they are not challenged by the debtor, the court-appointed administrator or the creditors. The claims included on the list of claims are paid as part of the insolvency proceedings in the order of distribution laid down by law.

Claims arising after the initiation of proceedings, in the period of observation or in the course of judicial reorganisation proceedings, will be paid in accordance with the documents substantiating them and do not have

to be included in the insolvency estate. This rule also applies to claims arising after the initiation of winding-up proceedings.

## 12 What are the rules governing the lodging, verification and admission of claims?

Except for employees, whose claims are recorded by the court-appointed administrator on the basis of the accounting records, all creditors whose claims are dated prior to the initiation of proceedings have to lodge an application for the admission of their claims within a deadline set in the order initiating the proceedings. The application must include: the creditor's name, domicile or registered office, the amount due, the grounds of the claim, and details of any potential grounds for preferential ranking. The documents supporting the claim and any grounds for preferential ranking are to be attached to the application no later than the deadline set for the submission of the application itself.

An application for admission of a claim must be lodged even if the claim is not shown by an enforceable title. Claims that on the date of the initiation of proceedings are not yet due or that are subject to conditions will be admitted for inclusion in the insolvency estate.

Where an application is made for the admission of a claim that is being put forward by an injured party in a civil lawsuit joined to a criminal prosecution, the claim will be recorded, subject to suspension pending final settlement of the action in the injured party's favour.

Claims qualifying for preferential treatment are included on the final list up to the market value of the guarantee, which is established through a valuation ordered by the court-appointed administrator or liquidator and performed by a valuer (evaluator).

All claims will be subjected to the verification procedure, except for claims ascertained in enforceable judgments and enforceable arbitration awards; nor does the procedure cover public budget claims arising from an enforceable title that has not been challenged within the deadlines set under the specific laws.

The court-appointed administrator or liquidator prepares a preliminary list of claims, which can be challenged before the delegated judge by any interested party, debtor or creditor. Except where the initiation of proceedings has been notified in breach of the rules on summonses and notice of procedural acts, the holder of a claim arising prior to the initiation of the proceedings who fails to submit an application for admission of the claim by the set time-limit (the time-limit is indicated in the notice and is not more than 45 days from the initiation of the proceedings) will lose the right to be included on the list of creditors and will not acquire the position of creditor entitled to take part in the proceedings in respect of that claim. The creditor will not be entitled to enforce the claim against the debtor, or against any members or partners in a debtor legal entity who have unlimited liability, after the proceedings have been closed, unless the debtor is convicted of simple bankruptcy (*bancrută simplă*) or fraudulent bankruptcy (*bancrută frauduloasă*) or is held responsible for fraudulent payments or transfers. The loss of entitlement will be ascertained by the court-appointed administrator or liquidator, who will not enter the creditor in the list of creditors.

## 13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

The funds obtained from the sale of assets and rights from the debtor's estate that are secured in favour of the creditor on a preferential basis will be distributed in the following order:

1. fees, stamp duties and any other expenditure arising out of the sale of the assets concerned, including expenses required for the conservation and administration of those assets, expenses incurred by the creditor under the forced recovery procedure, utility supplier claims that arise after the initiation of the procedure, and remuneration due to persons employed in the common interest of all creditors on the date of distribution, which will be borne on a pro rata basis in proportion to the value of all the debtor's assets;
2. claims of creditors enjoying preference that arise during the insolvency proceedings; these claims include capital, interest and other ancillaries, where applicable;
3. claims of creditors enjoying preference, including the entire capital, interest, and increases and penalties

of any kind.

If the sums realised from the sale of these assets are insufficient for the full payment of the claims concerned, the creditors have an unsecured or public budget claim, as the case may be, for the difference, which will be ranked with the other claims in the appropriate category. If, after the payment of the sums referred to previously, a surplus remains, it will be deposited by the court-appointed liquidator in the account of the debtor's estate.

Claims in a winding up procedure are paid in the following order:

(1) fees, stamp duties and any other expenditure arising out of proceedings under the same title of the present law, including expenses required for the conservation and administration of the debtor's assets, for the continuation of business, and for the payment of the fees of the persons employed for the purposes of the proceedings;

(2) claims arising from financing granted during the proceedings;

(3) claims arising from financing granted in insolvency prevention proceedings and the practitioner's fees

(4) claims arising from employment relationships;

(5) claims arising from the continuation of the debtor's business after the initiation of proceedings, claims due to co-contractors and to third-party acquirers in good faith or sub-acquirers who return to the debtor's estate their assets or the value thereof;

(6) budgetary claims;

(7) claims for sums due by the debtor to third parties on the basis of maintenance obligations, allowances for minor children or the payment of regular sums as means of subsistence;

(8) claims for sums determined by the delegated judge to support the debtor and his or her family, if the debtor is a natural person;

(9) claims arising from bank loans, with the related expenses and interest, claims arising from supplies of goods, provision of services or other work, claims from rents, and claims related to leases, including bonds;

(10) other unsecured claims;

(11) subordinated claims, in the following order of preference:

(a) claims arising from the assets of third parties who have acquired goods from the debtor in bad faith, claims of sub-acquirers in bad faith after the admission of actions for annulment, and loans granted to a debtor that is a legal person by a partner or shareholder holding at least 10% of the share capital or of the voting rights at the general meeting or, where applicable, by a member of an economic interest grouping (*grup de interes economic*);

(b) benefits not distributed to members;

(c) claims arising from gratuitous acts.

## 14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

If the procedure for coming to an arrangement with creditors is completed successfully on or before the date stipulated in the contract, as the case may be, the delegated judge will take a decision closing the proceedings. In that case, if the restructuring plan provided for reductions of claims, those reductions remain definitive. (Article 34 of Law No 85/2014).

Proceedings for reorganisation with continuation in business or for planned liquidation (*lichidare pe bază de plan*) will be closed by a judgment delivered on the basis of a report drawn up by the court-appointed administrator

that finds that all the payment obligations undertaken in the confirmed plan have been met and that all claims currently due have been paid. If proceedings initiated with a view to reorganisation are then converted into winding-up proceedings, they will be closed in accordance with the rules on winding-up proceedings. From the date of confirmation of a plan for reorganisation under court supervision, and for the duration of the reorganisation, the debtor is discharged from the difference between the value of the liabilities they had before the confirmation of the plan and the value indicated in the plan.

Winding-up proceedings will be closed when the delegated judge has approved the final report, when all the funds and assets from the debtor's estate have been distributed and when any unclaimed funds have been deposited at the bank. After the closure of the proceedings, an order is made to remove the debtor from the registers where they were listed.

By virtue of the closure of the proceedings, the delegated judge, the court-appointed administrator or liquidator and all the persons who assisted them are discharged of any duties or responsibilities relating to the proceedings, the debtor and the debtor's estate, creditors, holders of preference rights, shareholders or partners.

By virtue of the closure of the winding-up proceedings, a debtor who is a natural person (engaging in economic activities) is discharged of their liabilities prior to the winding up, unless they have been convicted of fraudulent bankruptcy or of making fraudulent payments or transfers; in such situations, they will be discharged of liabilities only in so far as they have been met as part of the proceedings.

## 15 What are the creditors' rights after the closure of insolvency proceedings?

After the closure of insolvency proceedings of whatever kind, creditors cannot pursue the debtor for claims arising prior to the initiation of the insolvency proceedings.

Creditors may still proceed to recover the entire value of claims against co-debtors and the debtor's guarantors.

## 16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

All the expenses arising out of legally established proceedings, including those relating to notice, invitations and communication of procedural documents by the court-appointed administrator or liquidator, will be borne from the debtor's estate (Article 39 of Law No 85/2014). If the debtor's financial resources are insufficient, a call will be made on the liquidation fund (*fondul de lichidare*).

## 17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

The court-appointed administrator or liquidator may file actions before the delegated judge for the annulment of fraudulent acts and transactions performed by the debtor to the detriment of the creditors' rights in the two years prior to the initiation of the proceedings.

The following acts or transactions performed by the debtor can be annulled in order to return the transferred assets or the value of other benefits provided:

- (a) acts of transfer without consideration performed in the two years prior to the initiation of the proceedings; sponsorships for humanitarian purposes are exempted herefrom;
- (b) transactions where what is given by the debtor is clearly greater than what is received, performed in the six months prior to the initiation of the proceedings;
- (c) acts performed in the two years prior to the initiation of the proceedings with the intention on all sides of preventing assets from being pursued by creditors, or of undermining their rights in any other way;

- (d) acts of transfer of ownership to a creditor for the satisfaction of a prior debt or for that creditor's benefit, performed in the six months prior to the initiation of the proceedings, if the amount that the creditor could obtain in the event of the winding-up of the debtor is below the value of the act of transfer of ownership;
- (e) the establishment of a right of preference with regard to an unsecured claim in the six months prior to the initiation of the proceedings;
- (f) advance payment of debts that are made in the six months prior to the initiation of the proceedings, if the due date was to have been a date after the initiation of the proceedings;
- (g) acts of transfer performed or obligations undertaken by the debtor in the two years prior to the initiation of proceedings with the intention of concealing or delaying the state of insolvency or committing fraud against a creditor.

The following acts or transactions can also be annulled, and the benefits recovered, if they were concluded in the two years prior to the initiation of proceedings with the persons in legal relations with the debtor:

- (a) those concluded with a limited partner (*asociat comanditat*) or with a partner who holds at least 20% of the capital of the partnership or of the voting rights at the general meeting of partners, if the debtor is that limited partnership (*societate în comandită*) or an agricultural company (*societate agricolă*), a company in partnership form (*societate în nume colectiv*) or a private limited company (*societate cu răspundere limitată*);
- (b) those concluded with a member or director, if the debtor is an economic interest grouping;
- (c) those concluded with a shareholder holding at least 20% of the shares in the debtor or of the voting rights at the general meeting of shareholders where the debtor is a public limited company (*societate pe acțiuni*);
- (d) those concluded with a director, a manager or a member of the debtor's supervisory bodies, where the debtor is a cooperative, a public limited company or an agricultural company;
- (e) those concluded with any natural or legal person holding a position of control over the debtor or their business;
- (f) those concluded with a co-owner or a with a party having shared ownership of a common asset;
- (g) those concluded with the spouse, blood relatives or relatives by marriage, up to and including the fourth degree of kinship, of the natural persons listed under points (a)-(f).

An action for the annulment of fraudulent acts performed by the debtor to the detriment of creditors may be filed by the court-appointed administrator or liquidator within one year from the expiry of the time-limit set for the preparation of the first report by the court-appointed administrator or liquidator, but no later than 16 months from the initiation of the proceedings. If the action is admitted, the parties thereto will regain their former position and the obligations existing on the date of transfer will be reregistered.

The creditors' committee or a creditor holding more than 50% of the value of claims entered in the insolvency estate may file such an action before the delegated judge if the court-appointed administrator or liquidator fails to do so.

No action for annulment can be brought against a constitutive act (*act de constituire*) under property law or an act of transfer of ownership under property law if it is concluded by a debtor in the normal course of their day-to-day business. An application for the annulment of a constitutive act or of an act of transfer of ownership will be entered automatically in the appropriate public registers.

In regard to the above-mentioned acts and transactions, there is a rebuttable presumption of fraud to the detriment of creditors.

After the insolvency proceedings have been initiated, all acts, transactions and payments performed by the debtor after the initiation of proceedings are automatically null and void, with the exception of steps required for the conduct of current business, steps authorised by the delegated judge, and steps endorsed by the court-appointed administrator.

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