

Insolvency - Romania

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The information given here does not cover insolvency proceedings for natural persons who are consumers rather than business people. Law No 151/2015 on insolvency proceedings in respect of natural persons (*Legea nr. 151/2015 privind procedura insolvenței persoanelor fizice*) has not yet been applied — its entry into force has been postponed until 31 December 2016 — and the procedures have not been notified to the Commission for listing in the annexes to Regulation (EU) 2015/848.

1 Who may insolvency proceedings be brought against?

The procedures that are set out in Law No 85/2014 on insolvency prevention procedures and insolvency proceedings (*Legea nr. 85 /2014 privind procedurile de prevenire a insolvenței și de insolvență*) apply to entrepreneurs (*profesioniști*) as defined in Article 3(2) of the Civil Code, except for those practising a liberal profession and those whose insolvency is governed by special rules (Article 3).

2 What are the conditions for opening insolvency proceedings?

If the proceedings are opened at the request of a debtor, there must be a state of insolvency in which the funds available are not sufficient to pay debts which are certain, liquid and due, and which may amount to less than RON 40 000; if proceedings are opened at the request of a creditor, there must be a state of insolvency in which the funds available are not sufficient to meet a claim which is certain, liquid and due and which must amount to more than RON 40 000 (failure to pay the debt after 60 days have elapsed from the due date).

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?

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 courtappointed administrator (*administrator judiciar*) in a reorganisation under the supervision of the court, or a courtappointed liquidator (*lichidator judiciar*) in a winding up (*faliment*).

The special administrator (*administrator special*) 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 its own affairs, to perform necessary administrative acts in the debtor's name and on its 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 the Law;
- c) to propose a reorganisation plan;
- d) after a plan has been confirmed, and provided the debtor has not been deprived of its right to manage its affairs, to conduct the debtor's affairs under the supervision of the courtappointed 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 for the settlement of objections and the approval of the report;
- f) to receive notification of the closure of proceedings.

If the debtor is deprived of its right to manage its affairs, it is represented by the courtappointed administrator or liquidator, who also conducts its 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).

Courtappointed administrator (*administrator judiciar*)

A courtappointed administrator may be a natural person or a legal person (including the legal person's representative), and must be an insolvency practitioner under the law. The main duties of the courtappointed 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 that report for approval by the delegated judge (*judcător-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 which 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 cannot exceed 40 days from the administrator's appointment;

- c) if the debtor has failed to meet its obligation to provide its accounting records within the legal timelimits, 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 provide secretarial services for meetings of creditors or of the 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 which are performed to the detriment of the rights of the creditors, and of certain transfers of assets, business transactions concluded by the debtor and guarantees contracted by the debtor which are likely to harm the rights of the creditors;
- 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 concluded by the debtor;
- k) to verify claims and, where applicable, to make objection to them, to notify the creditors where the claims have not been admitted or have been admitted only in part, and to prepare 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 prosecute actions seeking recovery of claims held by the debtor, for which purpose he or she may engage the services of lawyers;
- m) to conclude compromises, to discharge debts, to discharge guarantors, and to waive collateral, subject to confirmation by the delegated judge;
- n) to inform the delegated judge of any issue which would require a determination 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 from the entry.

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

The courtappointed administrator will submit a monthly report describing how he or she has performed his or her duties, justifying the expenditure incurred in the administration of the procedure and of any other expenses paid out of the debtor's assets and, where applicable, detailing progress with the inventory.

In order to accomplish his or her duties, the courtappointed administrator may engage the services of professionals such as lawyers, accountants, valuers or other specialists. The courtappointed administrator, and any of the creditors, may put forward objections against the valuation reports prepared in the case.

Courtappointed liquidator (*lichidator judiciar*)

If the delegated judge issues a windingup order, he or she appoints a liquidator to apply it. The duties of a courtappointed administrator cease on the date when the delegated judge establishes the duties of the liquidator. The main duties of the courtappointed 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 which 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 rights of the creditors, and of certain transfers of assets, business transactions concluded by the debtor and grounds of preference established by the debtor which are likely to harm the rights of the creditors;
- d) to apply seals, to draw up an inventory of the assets and to take the appropriate action for their preservation;
- e) to terminate certain contracts concluded by the debtor;
- f) to verify claims and, where applicable, to make objection to them, to notify the creditors where the claims have not been admitted or have been admitted only in part, and to prepare 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 prosecute actions seeking recovery of claims held by the debtor, for which purpose he or she may engage the services of lawyers;
- h) to receive payments on the debtor's behalf and to enter them to the debtor's asset account;
- i) to sell assets held by the debtor in accordance with this law;
- j) subject to confirmation by the delegated judge, to conclude compromises, to discharge debts, to discharge guarantors, and to waive collateral;
- k) to inform the delegated judge of any issue which would require a determination by the latter;
- l) to perform any other duties imposed by decision of the delegated judge.

In the procedure for a composition with creditors (*concordat preventif*), the debtor takes part in the procedure through its legal or agreed representatives.

The duties of the **administrator of a composition with creditors** (*administrateur concordataire*) are:

- a) to prepare the list of creditors, including creditors whose claims have been challenged or are pending trial, and the list of creditors who have signed the composition; where a creditor has a claim against debtors jointly and severally liable under the procedure for composition with creditors, that creditor will be entered on the list of creditors with the nominal value of the claim held until it has been fully covered;
- b) to prepare, together with the debtor, the proposed composition and its components or the draft composition and recovery plan;
- c) to take action in order to settle amicably any dispute arising between the debtor and the creditors or between creditors;
- d) to apply to the delegated judge for approval of the composition;
- e) to supervise the fulfilment of the obligations assumed by the debtor in the composition;
- f) to inform, as a matter of urgency, the meeting of creditors party to the composition of any failure by the debtor to fulfil or properly to fulfil its obligations;
- g) to prepare and to send monthly or quarterly reports to the meeting of creditors party to the composition on the work of the composition administrator and the business of the debtor; the report by the administrator of the composition should also include the administrator's opinion on the presence or absence of reasons for the early termination of the composition;
- h) to convene the meeting of creditors party to the composition;
- i) to apply to the court for the closure of the procedure for a composition with creditors;
- j) to carry out any other duties referred to in this chapter provided for in the composition with creditors or imposed by the delegated judge (Article 19 of Law No 85/2014).

5 Under which conditions may set-offs be invoked?

The opening of insolvency proceedings does not affect any creditor's right to invoke a setoff of its claim against a claim held by the debtor against that creditor if the requirements laid down by law for legal setoffs are met on the day of the opening of proceedings. The setoff may also be recorded by the courtappointed administrator or liquidator.

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 opened. 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 opening of insolvency proceedings, are 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 opening 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 so terminated the other party may file a claim for compensation against the debtor.

Where within the first three months following the opening 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 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)?

From the date of communication of the decision to approve a composition with creditors, individual actions filed by signatory creditors against debtors, and the limitation period for the right to apply for the enforcement of their claims against the debtor, are automatically suspended.

There is no suspension of interest rates, penalties and any other expenses incurred with regard to signatory creditors, except when they have expressed their written consent to the contrary, such consent being indicated in the draft composition with creditors.

In the order approving the composition with creditors, the delegated judge suspends all forced recovery proceedings.

At the request of the administrator of the composition, provided that the debtor has given guarantees to the creditors, the delegated judge may impose on creditors who are not signatories to the composition a period of deferral of the due date of their claim of not more than 18 months. In such period, no interest rates, penalties or any other expenses pertaining to the claim will be incurred. The rule on deferring the due date of the claim are not applicable to qualified financial contracts and bilateral netting transactions under a qualified financial contract or a bilateral netting agreement.

The composition with creditors is effective against public budget creditors (*creditori bugetari*) subject to compliance with the legal provisions on state aid in domestic and European law.

During an approved composition with creditors, insolvency proceedings cannot be opened against the debtor.

Any creditor obtaining an enforceable title against the debtor during the proceeding may apply to join the composition, or may recover its claim by any other means provided for by the law.

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

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 outofcourt actions, and any measures for the forced recovery of claims against the debtor's assets, are automatically suspended from the opening 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 opening of the proceedings, and civil lawsuits joined to criminal prosecutions (*acțiunile civile din procesele penale*) against the debtor;
- b) court actions filed against co-debtors and/or thirdparty guarantors;

c) outofcourt proceedings pending before sports commissions within sports federations operating under Law 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.

It is noteworthy 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 court seized.

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 courtappointed administrator or liquidator. Known creditors will be convened by the administrator or liquidator in the cases expressly provided for by the 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 will also be 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 terms of reference:

- 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 by the court;
- c) to take notice of the reports prepared by the courtappointed 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 courtappointed administrator or liquidator and their effects, and to propose other measures, giving reasons;
- e) to request the removal of the debtor's right to manage its 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 courtappointed 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 whether or not the debtor has been deprived of its right to manage its affairs, the insolvency practitioner has the following duties.

A courtappointed administrator supervises the debtor's asset management operations. He or she conducts 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.

He or she recovers claims, concludes compromises, draws up the inventory, and sells assets belonging to the debtor.

The debtor may use the assets only where it has kept its right to manage its affairs and within the limits of its current business; it is supervised and controlled by the courtappointed administrator.

After windingup proceedings have commenced, a courtappointed 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, only the courtappointed 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 opening of proceedings, with the exception of employees, whose claims are recorded by the courtappointed 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 opening the proceedings, and to enclose the necessary supporting documents. All claims submitted for admission and recording at the registry of the court will be presumed to be valid and accurate if they are not challenged by the debtor, the courtappointed 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 opening 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 opening of windingup proceedings.

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

Except for employees, whose claims are recorded by the courtappointed administrator on the basis of the accounting records, all creditors whose claims are dated prior to the opening of proceedings have to lodge an application for the admission of their claims within a deadline set in the order opening the proceedings. The application must include the creditor's name and home address 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 which on the date of the opening of proceedings are not yet due or which 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 courtappointed 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 which has not been challenged within the deadlines set under the specific laws.

The courtappointed 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 opening 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 opening of the proceedings who fails to submit an application for admission of the claim by the set timelimit (the timelimit is indicated in the notice and is not more than 45 days from the opening 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 criminal 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 courtappointed administrator or liquidator, who will not enter the creditor on 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 which 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,

claims of utilities suppliers which arise after the opening 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 is 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 courtappointed liquidator in the account of the debtor's estate. Claims in a winding up are paid in the following order:

1. fees, stamp duties and any other expenditure arising out of proceedings under the same title of the 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 remuneration of the persons employed for the purposes of the proceedings;
2. claims arising from financing granted during the proceedings;
3. claims arising from employment relationships;
4. claims arising from the continuation of the debtor's business after the opening of proceedings, claims due to co-contractors and to thirdparty acquirers in good faith or subacquirers who return to the debtor's estate their assets or the value thereof;
5. public budget claims;
6. 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;
7. claims for sums determined by the delegated judge to support the debtor and his or her family, if the debtor is a natural person;
8. 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;
9. other unsecured claims;
10. 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 subacquirers 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 (*grupu de interes economic*);
 - b) 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 composition with creditors** is completed successfully on or by the timelimit set in the contract, the delegated judge will take a decision recording the achievement of the objects of the composition. The changes to the claims set out in the composition with creditors then become final (Article 36 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 courtappointed administrator which 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 opened with a view to reorganisation are then converted into winding-up proceedings, they will be closed in accordance with the rules on windingup proceedings. From the date of confirmation of a plan for reorganisation under the supervision of the court, and for the duration of the reorganisation, the debtor is discharged from the difference between the value of the liabilities it had before the confirmation of the plan and the value indicated in the plan.

Windingup 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 the unclaimed funds have been deposited with the bank. After the closure of the proceedings, an order is made to remove the debtor from the registers where it was 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 liabilities 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 his or her liabilities prior to the winding up, unless he or she has been convicted of fraudulent bankruptcy or of making fraudulent payments or transfers; in such situations, he or she 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 opening of the insolvency proceedings.

Creditors may still proceed for 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 for the annulment of fraudulent acts and transactions** performed by the debtor to the detriment of the rights of the creditors in the two years prior to the opening 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 opening 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 opening of the proceedings;
- c) acts performed in the two years prior to the opening of the proceedings with the intention on all sides of preventing assets from being pursued by creditors, or of harming their rights in any other way;
- d) acts of transfer of ownership to a creditor for or towards the satisfaction of a prior debt, performed in the six months prior to the opening of the proceedings, if the amount which the creditor could obtain in the event of a winding-up of the debtor is below the value of the act of transfer of ownership;
- e) the establishment of a right of preference in regard to an unsecured claim in the six months prior to the opening of the proceedings;
- f) advance payment of debts which are made in the six months prior to the opening of the proceedings, if the due date was to have been a date after the opening of the proceedings;
- g) acts of transfer or assumption of obligations performed by the debtor in the two years prior to the opening 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 opening 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 its 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 courtappointed administrator or liquidator within one year from the expiry of the timelimit set for the preparation of the first report by the courtappointed administrator or liquidator, but no later than 16 months from the opening 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 registered again.

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 courtappointed administrator or liquidator fails to do so.

No action for annulment can be brought against a constitutive act (*act de constituer*) 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 its daytoday 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 abovementioned acts and transactions operations there is a rebuttable presumption of fraud to the detriment of creditors.

After the insolvency proceedings have been opened, all acts, transactions and payments performed by the debtor after the opening 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 courtappointed administrator.

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