

Client Brief

INSOLVENCY & RESTRUCTURING | ROMANIA

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THE NEW LAW ON THE INSOLVENCY OF INDIVIDUALS

On 26 June 2015, Law no. 151/2015 regarding the insolvency of individuals (the "**Law**") was published with the Official Gazette. The Law sets forth the legal framework for a collective procedure aimed at supporting the financial recovery of good-faith individuals, by means of covering their liabilities to the largest extent possible and having access to a residual debt discharge (as further detailed below).

According to its transitory provisions, the Law will enter into force within 6 months as of its publication with the Official Gazette, except for the provisions related to the establishment of insolvency commissions, which will enter into force within 3 days as of the Law's publication with the Official Gazette.

Pursuant to the Explanatory Notes to the Law¹, its adoption has become a *must* further to the expansion of individual over-indebtedness and, consequently, to the inability of the affected persons to comply with their financial obligations.

The adoption of the Law has a significant impact on banks' retail credit portfolios as well as on their internal procedures, instruments and programs which will have to be rethought and adapted during the next 6 months.

I. Types of Insolvency Proceedings

In line with most EU legal systems and according to international standards and best practices², the Law addresses the insolvency of individuals, by regulating at national level the following types of insolvency proceedings:

- ✓ Administrative insolvency proceedings based on a debts' reimbursement plan ("**Administrative Insolvency Proceedings**") – may be filed by the debtor only (if he considers that his financial condition is not compromised without remedy) and entails the fulfilment of the obligations set forth under the approved debts' reimbursement plan;
- ✓ Judicial insolvency proceedings by means of asset liquidation ("**Judicial Insolvency Proceedings**") – may be filed by the debtor or by his creditors, in case of failure of the debts' reimbursement plan; and

¹ Available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=14527;

² *Best Practices in the Insolvency of Individuals*, The World Bank Insolvency and Creditor/Debtor Regimes Task Force Meetings, 2011, available at: http://siteresources.worldbank.org/EXTGILD/Resources/WB_TF_2011_Consumer_Insolvency.pdf;

- ✓ **Simplified Insolvency Proceedings** – may be filed by the debtor if (i) the aggregate value of his claims is of maximum 10 minimum wages, (ii) all of his assets and income are exempted from foreclosure, and (iii) his age is above the standard retirement age or he has lost entirely or /more than half of his working capacity.

The main effects of the opening of insolvency proceedings are the stay of individual proceedings and the ability to file for the residual debt discharge, under the specific terms and conditions set forth under the Law. Cherry picking and voidable preferences are provided for in relation to Administrative Insolvency Proceedings and Judicial Insolvency Proceedings, respectively.

II. Scope of the Law

The Law applies to any debtor - individual (other than a "*professional*" as defined by the Romanian Civil Code³) who fulfils the following cumulative conditions:

- **Has his domicile, residence or usual residence located in Romania**, for at least 6 months prior to filing for insolvency;
- **Is in an insolvency status** (*i.e.* the debtor's patrimony is characterised by the insufficiency of available funds to repay his debts, as they fall due; insolvency is presumed if, after 90 days as of the due date, the debtor has failed to pay his debts towards one or more of his creditors) and there is no reasonable probability⁴ that, within the following 12 months he shall become capable of fulfilling his obligations in accordance with the agreements he entered into, while maintaining a reasonable life standard for himself and his family;
- **The aggregate value of his due and payable obligations is (i) at least equal to 15 minimum wages**, when filing for the opening of Administrative Insolvency Proceedings, and Judicial Insolvency Proceedings, or (ii) **of maximum 10 minimum wages**, when filing for the opening of Simplified Insolvency Proceedings⁵.

III. Newly Regulated Concepts

➤ Insolvency Commissions

The Law provides for the establishment of the following bodies:

- **the Central Insolvency Commission**, as the administrative body in charge with monitoring and coordinating the activities performed by the regional insolvency commissions with respect to on-going insolvency proceedings.

³ The insolvency regime applicable to *professionals*, as defined by the Romanian Civil Code, is governed by Law no. 85/2014 on pre-insolvency and insolvency proceedings, also known as the "*Insolvency Code*";

⁴ The reasonable probability is assessed by reference to the aggregate value of the debtor's obligations relative to his earned and predicted income, taking into consideration the debtor's professional training and field of expertise, as well his assets which are subject to foreclosure;

⁵ Currently, the minimum wage in Romania is at the level of RON 1050 (*i.e.* approximately EUR 234).

- the **Regional Insolvency Commission** (referred to under the Law as the "**Insolvency Commission**"), as the decentralised territorial body of the Central Insolvency Commission⁶ organised at the level of each county which fulfils:

- *decisional, control and supervisory* functions with respect to **Administrative Insolvency Proceedings**;
- *supervisory* functions with respect to **Simplified Insolvency Proceedings**; and
- *control and supervisory* functions with respect to the **post-insolvency supervisory period** related to **Judicial Insolvency Proceedings**.

➤ **Residual Debt Discharge**

This new concept is defined under the Law:

- with respect to **Administrative Insolvency Proceedings**, as the discharge of the claims included in the table of registered claims (in Romanian, *tabelul de creante*) which exceed the coverage ratio agreed under the reimbursement plan, as of the closing date of the insolvency proceeding;
- with respect to **Judicial Insolvency Proceedings**, as the discharge of the claims which remain uncovered after the post-insolvency supervisory period related to this type of insolvency proceedings;
- with respect to **Simplified Insolvency Proceedings**, as the discharge of the claims which remain uncovered as of the closing date of the Simplified Insolvency Proceeding.

➤ **Insolvency Proceedings Gazette (in Romanian, "*Buletinul Procedurilor de Insolvență*") – Individuals' Section**

- Within 6 months as of the Law's publication with the Official Gazette, a new Section of the Insolvency Proceedings Gazette will be created (under the coordination of the Trade Registry National Office) in order to ensure the publicity of the decisions taken by the Insolvency Commission and the court, as well as of any other acts for which the Law requires publication.

If you are interested in receiving further information on this topic, please do not hesitate to contact us.

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⁶ The Insolvency Commissions include the representatives of the National Authority for Consumer Protection, the Ministry of Public Finance, the Ministry of Justice, the Ministry of Labour, Family and Social Protection, the National Office of the Trade Registry; however, according to the Law, creditors' representatives are not members of the Insolvency Commissions;