

Romania

Rescue procedures in insolvency

Phase	Law no. 85/2014 on insolvency and insolvency prevention procedures, published in the Romanian Official Gazette no. 466 of 25 June 2014
Native name	Legea nr. 85/2014 privind procedurile de prevenire a insolvenței și de insolvență, publicată în Monitorul oficial al României nr. 466 din 25 iunie 2014
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Article

Law no. 85/2014 - insolvency prevention and insolvency proceedings [Legea nr. 85/2014 - procedurile de prevenire a insolvenței și de insolvență] - 5, 16-37 Law no 216 of 14 July 2022 for amending and supplementing the Law no. 85/2014 on insolvency prevention and insolvency proceedings and other normative acts [Lege nr. 216 din 14 iulie 2022 pentru modificarea și completarea Legii nr. 85/2014 privind procedurile de prevenire a insolvenței și de insolvență și a altor acte normative] - 5, 6, 9, 15.

Description

Companies in financial difficulty may be subject to a process of economic recovery and insolvency prevention. Thus, the debtor in difficulty may request the court to designate them an ad hoc administrator, the purpose of which is to achieve, within 90 days of designation, an agreement between the debtor and one or more of the creditors, in order to overcome the state of financial difficulty the debtor is in, to safeguard him/her, to keep jobs and to cover debts against the debtor.

Another possible recovery attempt is the use of a scheme of arrangement, which is a court-approved agreement between the company in financial difficulty and creditors holding at least 75% of the claims in terms of value. The scheme of arrangement offer

made by the company in difficulty to its creditors (who can either accept or reject the offer) includes:

1. a list of the company's assets and liabilities, certified by an accounting expert or, as the case may be, audited by an auditor authorised by law;
2. the causes of the financial difficulty and, if necessary, the measures taken by the debtor to overcome it until now;
3. projection of the financial and accounting evolution over the next 24 months.

Based on this information, the company will follow a recovery plan, which shall include at least the following measures:

- the reorganisation of the debtor's activity through measures such as restructuring of the debtor's management, modification of the organisational structure (organisation chart of staff), staff reduction or any other measures deemed necessary;
- the ways in which the debtor tries to overcome the financial difficulty, such as increase of the share capital, conversion of some claims into shares, bank loans, loans of the shareholders, establishment or dissolution of some branches or work places, sale of assets, etc.

If the recovery fails, insolvency proceeding will take place. According to article 5 (29) of Law no. 85/2014, insolvency is characterised by insufficient funds available for the payment of certain debts. The debtor is presumed insolvent if, after 60 days from date of payment, the debtor has not paid their debt to the creditor (this presumption is relative, i.e. it is a rebuttable presumption). Insolvency is considered imminent if it is proved that the debtor will not be able to pay the due debts with the available funds.

In case of an employer's insolvency, salary claims are privileged in comparison to other claims, being covered with priority. In addition, as any creditors, employees whose salary was not paid may trigger insolvency procedures. Employees can apply for the opening of insolvency procedures of the employing company if each individual's claim is higher than six gross average monthly salaries in the economy.

At the creditors' meeting, the employees of the debtor company may delegate a representative who will vote for the full value of the claims representing the salaries and other monetary rights to which they are entitled.

After the opening of the insolvency procedures, dismissal of the debtor's staff will be done in a speedy manner by the judicial administrator/liquidator. The judicial administrator/liquidator will only give dismissed personnel the legal notice (and no other entitlements, such as compensatory payments). In collective redundancies (at least 10

employees, if the employer has more than 20 employees and fewer than 100 employees; at least 10% of the employees, if the employer has at least 100 employees and fewer than 300 employees; and at least 30 employees, if the employer has at least 300 employees), the length of the information and consultation procedure provided by the Labour Code is cut down by half.

Law no 216 /14 July 2022 amends and supplements Law no. 85/2014 on insolvency prevention and insolvency proceedings. The new amendments are a restructuring of Law 85/2014 and a long-awaited regulation of insolvency proceedings in view of EU Directive 2019/1023.

One of the important changes is the abolition of the ad hoc mandate and its replacement by the restructuring agreement procedure. Other amendments regards the redefinition of the scope of the law, the main beneficiaries of the provisions of the law (in the case of the liberal professions, the procedures laid down in the law concern their undertaking and not their professional status) and new concepts are introduced. In addition, certain terms specific to insolvency proceedings are redefined, early warning procedure is introduced. The procedure specified that certain professionals are alerted by the tax authority to non-fulfilment of obligations and are provided with information on the remedies free of charge via a website. The aim is to give companies an early warning of a situation which, perpetuated in the absence of remedial measures, would have the potential to lead to default. The provisions from the law concerning the insolvency prevention procedure are modified.

Commentary

According to the previous Insolvency Law (no. 86/2006), collective redundancy procedures were not applicable if the employer was in a state of insolvency. By decision no. 64/2015 (published in the Romanian Official Gazette no. 286 from 28 April 2015), the Constitutional Court declared the unconstitutionality of these provisions. Even in the case of a speedy procedure due to the employer's insolvency, the employer/liquidator/judicial administrator has to respect the workers' rights associated with collective redundancies. As a result, the current law provides that the right to information and consultation of employees will indeed be observed, but the length of the procedure will be shortened.

Threshold value — this represents the minimum amount of the claim in order to enable the application to open insolvency proceedings to be filed. The threshold value is 50,000 lei (approx. €10,000) for both creditors and debtors, including requests made by the liquidator appointed in the liquidation procedure under the law for claims other than wage claims and for employee's six gross average salaries per economy/employee. Under the old provision, the threshold value was 40,000 lei (approx. €8,000) for both creditors and

debtors, including requests made by the liquidator appointed in the liquidation procedure for claims other than wage claims, and for employees it was also six gross average salaries per economy/employee. A new term (article 5) - "Payment Agreement" is introduced in insolvency proceedings, i.e. the understanding between the debtor and the creditor of the extinguishing in one or more instalments of liabilities at times other than those due under contractual or legal terms.

Additional metadata

Cost covered by	None
Involved actors other than national government	Other Court
Involvement (others)	Ad hoc administrator; liquidator/judicial administrator
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

- [Law no. 85/2014 - insolvency prevention and insolvency proceedings \[Legea nr. 85/2014 - procedurile de prevenire a insolventei si de insolventa\]](#)~~~ [Decision of Constitutional Court no. 64/2015 \[Decizia CCR nr. 64/2015 - admite exceptia de neconstitutionalitate a art. 86 alin. \(6\) din Legea nr. 85/2006 - procedura insolventei\]](#)~~~ [Law no. 113/2020 \[Legea nr. 113/2020\]](#)~~~ [Law no 216 of 14 July 2022 for amending and supplementing the Law no. 85/2014 on insolvency prevention and insolvency proceedings and other normative acts \[Lege nr. 216 din 14 iulie 2022 pentru modificarea și completarea Legii nr. 85/2014 privind procedurile de prevenire a insolvenței și de insolvență și a altor acte normative\]](#)~~~ [Insolvency law: main changes introduced by Law No 216/2022 \[Legea insolvenței: principalele modificări introduse prin Legea nr. 216/2022\]](#)~~~ [Legea nr. 85/2014 \(Law no. 85/2014\)](#)~~~ [Decision of Constitutional Court no. 64/2015](#)~~~ [Legea 113/ 8 iulie 2020 \(Law no. 113 / 8 July 2020\)](#)~~~

Citation



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