Fine Law
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Insolvency and Restructuring Guide

1. Issues arising when a company is in financial difficulties[1]

How might a creditor take security over assets?

According to the Romanian law, a creditor may secure his receivable against a debtor by placing a mortgage, a pledge, or other legal security interests or retention rights/liens on the debtor's goods/assets. By doing so, he becomes a secured (privileged) creditor.

In Romania the mortgage is defined as a real guarantee over mobile or fix goods/assets, whether tangible or non-tangible. Unlike the mortgage, the pledge involves the actual conveying of the good/asset to the creditor, therefore the pledge may only be placed over tangible assets. Similarly, a person who has the obligation to return or to remit a good/asset to a creditor, is entitled to retain such good/asset as long as the creditor does not perform at his turn his own obligations sourcing from the same legal relationship grounds/source or does not reimburse the necessary and useful expenses made in relation with that good/asset or the damages caused by that good/asset.

As a rule of thumb, from the date of the commencement of an insolvency procedure, all contentious, non-contentious or enforcement procedures against the insolvent company are suspended and the creditors can no longer take security over the assets. The suspended contentious, non-contentious or enforcement procedures are terminated on the date the court decision ordering the commencement of the insolvency procedure becomes final.

Nonetheless, in a number of cases a secured creditor may request the syndic judge to revoke the suspension with regard to its security and the immediate capitalization of such security asset, within the insolvency procedure.

Can transactions entered into by the company be vulnerable to attack?

Yes.
The receiver (judicial administrator) or, where applicable, the liquidator may petition the syndic judge to cancel fraudulent deeds and operations concluded by the debtor to the detriment of creditors' rights within the last 2 years preceding the

[1] Note that if a company cannot meet its financial obligations, it can enter either reorganization (sometimes followed by bankruptcy, in case of reorganization failure) or, directly, bankruptcy. The applicable legal regime in the two cases is similar only to a certain extent.

commencement of the insolvency proceedings.[2]

The following deeds and operations may be cancelled resulting in the return of the transmitted goods/assets and of the value of other performed actions:

a) free of charge transfers occurred within the last 2 years before the commencement of the insolvency procedure (sponsorships for humanitarian purposes are exempt);
b) operations where the debtor's obligation obviously exceeds the benefit received, made within the last 6 months before the commencement of insolvency proceedings;
c) acts concluded within the last 2 years before the commencement of the insolvency procedure, with the intention of all parties involved in them to conceal assets from pursuing creditors or harming the creditors in any other way;
d) acts of transfer of property to a creditor to extinguish a prior debt or in the benefit thereof, made in the 6 months days prior to the insolvency procedure's initiation, if the amount that the creditor may obtain during the insolvency proceedings is less than the one specified in the transfer deed;
e) establishment of a preference right for a previously unsecured debt , during the 6 months preceding the commencement of the insolvency procedure;
f) prepayments made in the 6 months prior to the commencement of the insolvency proceedings, if due date was set for a date later than the commencement of such proceedings;
g) deeds of transfer or obligation undertakings by the debtor in a period of two years preceding the date of the commencement of the insolvency procedure, with the intent to hide / delay insolvency status or to fraud a creditor.

Additionally, the law stipulates a series of transactions concluded within 2 years preceding the commencement of the insolvency procedures, with a number of debtor affiliates (associates, members, administrators, shareholders, controlling persons, etc.) that are also cancellable and therefore the relevant obtained benefits returnable, if such transactions were entered into with the intention to harm the creditors.

What director liabilities might arise from the company trading while in distress?

Liability of the debtor's management may be engaged in case the debtor's directors

[2] For the purposes of this presentation "insolvency proceedings" means both the judicial reorganization procedure and the bankruptcy procedure, as such are defined in Section 2 of this material ("Taking action"), in the answer to Question 2, point (i). Nevertheless, whilst the judicial reorganization procedure is a procedure by which the debtor is allowed to continue its business based on a reorganization plan with an aim to rescue the company as a going concern, the bankruptcy procedure is aimed at satisfying the creditors, which involves the capitalization of the company's assets to the benefit of the creditors and for the purpose of satisfying their receivables, followed by the liquidation of the company.

or auditors or other persons fraudulently determined the debtor's insolvency.

Thus, upon the request of the judicial administrator or the liquidator the syndic judge may decide that the supervising or the managing bodies of the company, as well as other persons that contributed to the insolvency status of the debtor may be held liable for a part or for all of a debtor's liabilities. At the same time, the judicial administrator or the liquidator may ask the syndic judge to undertake conservatory measures in relation to the property of the persons sued as culpable.

Liability of the debtor's managing persons cannot be triggered in cases where such persons have opposed, within the relevant management bodies, to the decisions leading to insolvency or in cases where such persons have been missing when such decisions were taken and have recorded their opposition after such decisions had been taken.

2. Taking action

What formal procedures are available for the company?

The Romanian law provides for two different insolvency proceedings: the general procedure and the simplified procedure.

(i) The general procedure

The general procedure generally applies to persons falling under the definition of „professionals" as stipulated in the Romanian Civil Code, namely persons that exploit an enterprise (with lucrative or non-lucrative scope). As an exception, certain professionals are subject to the simplified procedure, in cases enumerated by law (and mentioned at point (ii) immediately below).

Under the general procedure, the debtor enters, after a period in which it is placed under surveillance, either successively into **judicial reorganisation** followed by **bankruptcy** or, as the case may be, separately into judicial reorganisation or bankruptcy only. The period of surveillance is defined by law as the period between the date of the commencement of the insolvency procedure and the date of confirmation of the reorganization plan or, where applicable, the date of commencement of the bankruptcy procedure.

Judicial reorganisation is defined by law as an insolvency procedure that applies to the insolvent debtor, legal person, in view of paying its debts, according to a reorganisation plan. The procedure involves the making, approval, confirmation, implementation of such reorganization plan, and the compliance with that plan, which may provide, together or separately, the following:

a) Operational and/or financial restructuring of the debtor;
b) Corporative restructuring by modification of share capital structure;
c) Restraining the activity by way of partial liquidation of the assets owned by the debtor;

Bankruptcy is, according to law, an insolvency procedure that is collective and egalitarian, and is applied to the debtor with the scope of liquidating its assets to cover its debts, and is followed by the deletion of the debtor from the registry in which it is registered. When the bankruptcy procedure ends, the debtor ceases to exist.

(ii) The simplified procedure

It applies to the following insolvent debtors that can be framed in one of the following categories:

a) Professional individuals subject to registration in the Trade Registry, with the exception of those exercising liberal professions (e.g. lawyers, architects).
b) Family enterprises and members of family enterprises.
c) Debtors that are professionals and meet one of the following conditions: they do not own any assets; their statutes or accounting documents cannot be found; their administrator cannot be found; the registered company or professional headquarter does not exist anymore or does not correspond to the address registered in the Trade Registry.
d) Legal persons that are dissolved voluntarily, judicially or as an effect of law, before the insolvency request is filed, even in cases the liquidator has not been appointed or, although appointed, registration of such appointment has not been made with the Trade Registry.
e) Debtors that have declared, by their own insolvency request, their intention to go to bankruptcy.
f) Any person that undertakes activities that are specific to professionals, who have not obtained the authorization required by law for exploitation of an enterprise and is not registered in any dedicated public registries.

The simplified procedure places the debtor directly into bankruptcy procedure.

What informal procedures are available for the company?

The judicial reorganization procedure and the bankruptcy procedure are the only actual insolvency procedures to be used for covering the debtor's liabilities.
In situations where the debtor has not yet become insolvent but is facing financial difficulties, the law establishes two options that the debtor and respectively the

creditors may have, as the case may be, in view of saving the debtor from an eventual insolvency. These procedures are:

a) The ad-hoc mandate – a confidential procedure triggered by de debtor's request when facing financial difficulties, by which an ad-hoc mandatary of the debtor, appointed by the competent court, negotiates with creditors so as to reach an understanding between one or more of creditors and the debtor with respect to the debtor's liabilities.
b) The preventive concordate – a contract concluded between the debtor facing financial difficulties, on one side, and the creditors holding 75% of the value of the accepted and unchallenged debts on the other, as endorsed by the syndic judge, by which the debtor proposes a plan for recovery and payment of debts of such creditors, and the creditors accept to support the debtor's efforts to escape financial difficulties.

While the above four procedures may be qualified as formal since they are stipulated by law, a debtor is nevertheless entitled to conclude arrangements with its creditors to sort out its debts before the insolvency procedures are commenced, but such arrangements do not prevent such creditors or other third parties from filing for insolvency or enforcing binding Court rulings against the debtor.

Which procedures are creditor-friendly/debtor-friendly?

The ad-hoc mandate and the preventive concordate may be considered as debtor-friendly, since such are procedures that may be followed before insolvency and their target is to avoid insolvency and to help the debtor escape financial distress.

For the scenario in which insolvency has occurred, the reorganization procedure might be considered a debtor-friendly procedure, as it aims at keeping the company as a going concern and strengthening its business by pursuing a reorganization plan which may of course cause delays in payments towards creditors, whilst the bankruptcy procedure is a rather creditor-friendly procedure, its purpose being the satisfaction of the debtor's creditors at the cost of sacrificing the company.

What are the triggers for insolvency?

Insolvency is defined by law as the status of the debtor's patrimony (our note: „patrimony" meaning here the the debtor's assets and liabilities as a whole) characterized by insufficiency of funds available for paying debts that are certain, liquid and due, as follows:

a) insolvency is presumed when the debtor, after 60 days from due date, has not paid a debt to a creditor; This presumption is not absolute - it can be overthrown.

b) insolvency is imminent when it has been proven that the debtor will not be able to pay on maturity date the engaged due debts, with the funds that available on that date.

Therefore, the triggers for the commencement of the insolvency proceedings are the lack of liquidities as per letter a) above, and, respectively, the imminent insolvency as per letter b) above.

What is the process for filing?

Insolvency proceedings require a written insolvency request to the competent courts. Such request may be filed by the creditors or by the debtor itself or by another person or entity entitled by the law. The Agency of Financial Supervision may also initiate the procedure but only against the financial entities under its authority. The insolvency request is admissible in case of an unpaid debt that is certain (i.e. their existence is doubtless) , liquid (i.e. have a definite or at least determinable amount) and due and exceeds RON 40,000 (approx. EUR 9,000). A company's employee is also a creditor for insolvency purposes if (s)he has a receivable against the company in amount of minimum 6 national gross average wages.

The debtor which has reached insolvency status is obliged to file for insolvency procedure in 30 days from the occurrence of such status. If on expiry of such term the debtor is engaged in good faith non-judicial negotiations for debt restructuring, the debtor must file the insolvency request within 5 days from the failure of such negotiations. The same 5 days term is applied in case of good-faith debtors that have reached insolvency status while pursuing the ad-hoc mandate or the preventive concordate procedures, provided that there are strong indications that such procedures may lead to an extra-judicial agreement with creditors.

The debtor facing „imminent insolvency" (as defined by law and noted above) may, but is not obliged to file an insolvency request.

Who can place the company into insolvency proceedings?

The competent courts of law (County Tribunals), on the request of the entities mentioned in the answer noted immediately above.

What is the extent of court involvement?

All proceedings regarding judicial reorganization and bankruptcy, except for the appeals filed against the syndic judge's decisions (which are subject to the higher jurisdiction of the Courts of Appeal), are under the exclusive competence of the Tribunal having jurisdiction over the administrative unit (County) in which the debtor has lastly been headquartered (and registered as such) for 6 months or more.

The syndic judge is randomly selected through a computerized system amongst the specialized judges within the respective Tribunal.

As a rule of thumb, the syndic judge controls the judicial procedure, while commercial decisions meant to redress the debtor and/or satisfy the claims of the creditors belong to the receiver or to the liquidator, as the case may be.
Amongst the numerous procedural attributions of the syndic judge, are as follows:

a) to decide upon commencement of the insolvency procedure, both general as well as simplified procedure;
b) to appoint or, as the case may be, replace the temporary receiver or liquidator and set forth their attributions;
c) to confirm the receiver or the liquidator appointed by the creditors' assembly;
d) to settle the potential objections filed by the creditors' committee, the debtor or any other persons against the measures taken by the receiver or the liquidator;
e) to examine the actions filed by the receiver or by the liquidator for the cancellation of the fraudulent actions committed before the opening of the insolvency procedure and for the nullity of payments and operations undertaken by the debtor without right, after the commencement of the insolvency procedure;
f) to decide upon the closing of the insolvency procedure.

How long will the insolvency process take?

In practice, insolvency proceedings are lengthy and have a tendency to stretch over several years. No time frameworks are established or imposed by law, except the one regarding the reorganization plan which forms the back-bone of the judicial reorganization procedure. Thus, such reorganization plan is valid for 3 years from the date of its confirmation.

What other steps, such as notices, are required?

Further to the commencement of the insolvency procedure, the receiver or the liquidator shall send a notice to the debtor, creditors and to the Trade Registry office or to any other registry where the debtor might be registered. This notice will also be published in a large circulation newspaper, as well as in the Insolvency Procedure Bulletin.

After the court decision establishing the commencement of the insolvency procedure becomes final, all documents and correspondence of the debtor, receiver or liquidator shall contain the annotation "in insolvency" in Romanian, English and

French. After the debtor enters judicial reorganization or bankruptcy, the annotation shall stipulate such status, as applicable.

Following the notification from the receiver or the liquidator the creditors may submit their claims. Such claims shall be recorded with a register maintained with the competent court of law. After all claims are verified, the receiver or the liquidator shall establish a preliminary table of debts. Such table may be challenged by creditors, debtor and other interested third parties.

What rights does the company as debtor benefit from?

The debtor's general meeting or assembly has the right to appoint a representative as a special administrator (other than the court appointed receiver), in order to represent the associates / shareholders /members of the debtor, and to participate in the insolvency procedure on behalf of the debtor in case the debtor is allowed by the syndic judge to remain in control of its own management, during insolvency.

On the date of commencement of the insolvency procedure, all contentious or non-contentious actions or measures for the enforcement of claims against the debtor or its assets shall be suspended by law.

Any interest, penalty for late payments or any other penalty deriving from debts to be claimed before the commencement of the insolvency procedure cease to accrue (with some exceptions provided by law) and the debtor's shares are suspended from transactions on the stock exchange market until the confirmation of the reorganization plan. The titles issued by the debtor are removed from the regulated financial market, when the debtor's bankruptcy occurs.

Additionally, no utility supplier, whether electricity, natural gas, water, phone services or other similar, has the right to change, refuse, or temporarily cease the supply to the debtor or its assets, of such utility during the observation period and judicial reorganization period, if the debtor is a captive consumer according to law.

Is there anything resembling a debtor in possession process?

Whilst aiming at satisfying the creditors' interests as much as possible, the law offers the debtor a limited possibility of self-management which is subject to an approved reorganization plan. As a rule, upon the commencement of the insolvency proceedings, the debtor's right to manage its own activity ceases. The management of the debtor is entrusted with the receiver, unless the debtor has expressed its intention to be subject to judicial reorganisation; in such case the debtor retains the right to manage itself (through the special administrator appointed by the statutory assembly of members/associates/shareholders of the debtor) until the commencement of the bankruptcy procedure.

That said, we may reasonably assert that the insolvent company is a „debtor in possession" during the judicial reorganization procedure (subject to the conditions noted above). Nonetheless, even in such case the debtor is procedurally supervised by the syndic-judge and operationally under the surveillance of the receiver. Furthermore, the syndic judge may revoke the right of management of the debtor if any creditor or the receiver provides that there is an indication that losses have continued to accrue or there is no likeliness of a reorganization plan being worked out. However, loss of management right does not imply the loss of property right over the debtor's assets.

3. Creditor issues

How are unsecured creditors affected?

According to law, in case of sale of encumbered assets (mortgage, pledge, any other security interests or liens of any kind), the amount obtained shall firstly cover the sale related expenses, including fees and expenses related to the preservation and administration of such assets. Secondly, the interests of the secured creditor in relation to an asset shall be satisfied before those of the unsecured creditor. Thus, if the secured creditor's claim exceeds or equals the sale amount, the unsecured creditors are forced to wait until other liquidities are made available, if the case may be, or risk the impossibility to recover their claim. Unfortunately, in most cases of bankruptcy, the unsecured creditors do not satisfy their debts.

How might a secured creditor enforce its security?

The procedure for the liquidation of the debtor's assets is carried out under the control of the syndic judge who supervises the activity of the liquidator and takes the necessary steps for the sale of the debtor's assets and the distribution to the creditors of the amounts resulting from the liquidation. As a rule of thumb, a secured creditor cannot enforce its security individually and by a separate action, once the insolvency procedure has commenced. Nonetheless, in a number of cases a secured creditor may request the syndic judge to revoke the suspension with regard to its security and the immediate capitalization of such security asset. Whether sold prior to the commencement of, or during, the bankruptcy proceedings, the assets that make the object of the security must be sold by auction or by direct sale and the amount thus obtained shall be distributed with the observance of the order imposed by the law, as mentioned at the point immediately above.

Will set-off apply and if so do any issues arise from this?

According to Romanian law, the commencement of insolvency proceedings shall not affect the right of creditors to claim compensation against the debtor, if the conditions provided by law on compensation are met at the time of the commencement of legal proceedings.

Are there prevailing intercompany debt issues?

Principally, intercompany debts are treated in the same way as debts vis-à-vis third parties. However, claims for repayment of shareholders or associate loans are ranked last on the claim rank list.

Is creditor recourse available in respect of any company affiliates?

No.

Will a creditor committee be established and if so what is its role?

The syndic judge may appoint, taking into account the number of creditors, a committee formed by 3 or 5 creditors, from amongst those having the right to vote, holding biggest debts that benefit from a preference right, and respectively budget debts and unsecured debts. If due to the small number of creditors the syndic judge does not consider necessary the appointment of a creditor's committee, the attributions of such committee shall be exercised by the creditors' meeting or assembly.

At the first session of the meeting of the creditors, they can elect a creditors' committee, made of 3 – 5 creditors selected from amongst the first 20 creditors (based on the amount of their receivables against the debtor). The committee thus appointed will replace the committee previously appointed by the syndic judge, if the case.

The main duty of the creditors' committee is to represent and defend the rights of the creditors in relation with the debtor, the judicial administrator or the liquidator and the syndic judge. Consequently, the main attributions of the creditors' committee are as follows: (i) to analyse debtor's financial status and to make recommendations to the creditors' assembly with regard to the debtor's activity; (ii) to negotiate with the receiver or the liquidator the terms and conditions of their appointment; (iii) to analyse the reports drafted by the receiver or the liquidator and, if the case, to challenge such reports; (iii) to draft reports on the measures taken by the receiver or by the liquidator and the effects of such measures, to present such reports to the creditor's assembly and to propose other measures, if the case; (iv) to request the withdrawal of the debtor's right to manage its business; (v) to file actions for the cancellation of fraudulent deeds or operations made by the debtor to the detriment of creditors' rights when such actions were not filed by the receiver or by the liquidator.

4. Continuing the business

Who controls the company in a given procedure?

A. The special administrator

As previously mentioned, following the commencement of the insolvency procedure, it may be the case that the relevant shareholders/associates/members are allowed to continue to control the debtor's activity. Thus, at the first session of the general meeting of the debtor's shareholders they will appoint a special administrator, whose role will be to represent the debtor's interests as well as their interests, and to participate in the procedure on behalf of the debtor. The special administrator has the following main attributions: (i) to participate, on the debtor's behalf, in the trials having as object the assessment or cancellation of the fraudulent deeds and operations effectuated by the debtor after the opening of the insolvency procedure, that are not authorized by the syndic judge or approved by the receiver; (ii) to file complaints during the insolvency proceedings; (iii) to submit a reorganization plan; (iv) to manage the debtor's activity under the supervision of the receiver after the confirmation of the reorganization plan if the debtor holds its right to self-management; (v) once the bankruptcy procedure is initiated, to participate in the inventory, to sign the final report and the closing balance and to participate in the meeting convened for the settlement of the objections and the approval of the final report; (vi) to receive the notification regarding the closing of the proceedings.

B. The receiver (or judicial administrator)

Based on the offers submitted to the insolvency case file (or ex officio from the list of the National Union of Insolvency Practitioners, if no offers are available), the syndic shall appoint a provisional receiver. At the first session of the creditors' assembly the creditors holding minimum 50% of the aggregate value of receivables may decide for the election of another receiver (an individual or a legal entity), authorized practitioner in insolvency, and establish remuneration, save for the case when such remuneration shall be paid out of the liquidation fund established by law for such situations, in which case the syndic judge sets forth the amount thereof. This official receiver is in charge of fulfilling the actions relating to the insolvency proceedings, until the bankruptcy is ordered. The main attributions of the receiver are: (i) to examine the debtor's activity and the causes and circumstances which led to the state of insolvency, and to draw up reports on such matter; (ii) to propose to the syndic judge either the application of the simplified procedure or the continuation of the general procedure and analyse the opportunity of the debtor's reorganization and if the case draw up the reorganization plan; (iii) to supervise management operations of the debtor; (iv) to pursue the collection of the debtor's receivables; (v) to file actions for the cancellation of fraudulent deeds and operations concluded by the debtor and harming the creditors' rights, as well as of certain asset transfers and business operations entered into by the debtor and of the setting up of preference rights likely to prejudice the creditors' rights; (vi) to terminate certain contracts concluded by the debtor.

C. The liquidator

In case the syndic judge decides upon the commencement of the bankruptcy procedure, a liquidator shall be appointed based on the same procedural steps applicable to the receiver, as per point B above. The liquidator may also be the former receiver. The mandate of the receiver ceases at the moment when the syndic judge establishes the liquidator's powers. The main attributions of the liquidator are: (i) to examine the activity of the debtor who is subject to the simplified procedure, with respect to the matters of fact, and drafting a detailed report of the causes and circumstances that led to insolvency , by mentioning the potentially liable persons and potential grounds for engaging the latter's liability, if such report has not previously been drawn by a receiver; (ii) to manage the debtor's activity; (iii) to file actions for the cancellation of fraudulent deeds and operations concluded by the debtor and harming the creditors' rights, as well as of certain asset transfers and business operations entered into by the debtor and of preference rights likely to prejudice the creditors' rights; (iv) to place seals, to make the inventory of the assets and to take the appropriate measures for their preservation; (v) to terminate contracts concluded by the debtor; (vi) to pursue the collection of and cash in the debtor's receivables and to initiate legal claims and hire lawyers for that purpose; (vii) to sell the debtor's assets, according to the provisions of the law; (viii) to conclude transactions, discharge debts, discharge the personal guarantors and give up the tangible securities, conditional upon confirmation of the syndic judge.

How is the company financed?

During the reorganization procedure, the company's activity continues. Thus, the company is financed by the revenues generated by its activity. The company may also be financed by revenues resulted from the sale of the company's assets.

How will proceedings affect employees and what rights do they benefit from?

The commencement of the insolvency process does not automatically conduct to the termination of the existing employment contracts. After the commencement of the insolvency procedure the receiver or the liquidator may terminate urgently the individual employment contracts of the debtor's employees. The liquidator has solely the obligation to serve the regular notice period to the dismissed employees, as provided in the relevant labour contracts.

How will proceedings affect contracts or other commercial arrangements entered into by the company?

As a general rule, the ongoing contracts are maintained as an effect of law on the date of the commencement of the insolvency procedure. Any contractual clauses establishing termination, waiver of term benefits and anticipated maturity for reason of the commencement of the insolvency procedure are null and void. Within 3 months from the commencement of the procedure, the receiver or the liquidator may terminate any contracts, unexpired leases, other long term agreements as long as

such contracts have not been performed entirely or substantially by all contracting parties. The receiver must respond, in 30 days from receipt, to the notification of the contractor, issued in the first 3 months from the commencement of the insolvency procedure, notification by which the receiver or the liquidator is requested to terminate the contract. In case there is no answer, the receiver shall not be entitled to ask for the performance of the contract, such contract being considered terminated.

A contract shall be considered terminated:

a) on the expiry of 30 days from receipt of the request of the contractor regarding termination of contract, if the receiver or the liquidator does not respond.
b) on date of such notification for termination, issued by the receiver or the liquidator.

5. Claims issues and procedures

What is the method for the filing of claims?

The summoning of all parties, as well as the communication of the procedural acts, convening notices and notices will be made by the Insolvency Procedure Bulletin, an official insolvency publication that facilitates summoning or convening procedures and any document subpoena.

Further to the commencement of the insolvency procedure, the receiver shall send a notice to the debtor, creditors and the trade registry office or any other registry where the debtor might be registered, at the debtor's expense. This notice will also be published in a large circulation newspaper, as well as in the Insolvency Procedure Bulletin. Unless the notification on the commencement of the procedure was made with the non-observance of the legal provisions (e.g. the receiver's notification was not served to the creditors with at least 10 days before the deadline for submission of creditor claims), the receivables of a creditor who failed to submit its claims as established by the court decision establishing the commencement of the insolvency procedure, will be disregarded. A term larger than 45 days of the date of the commencement of the procedure cannot be granted by the court. The employees' receivables are exempt from such rule, such debts being automatically acknowledged registered by the receiver or liquidator.

What is the timing for the filing of claims?

See above.

How will claims rank?

According to the Romanian law, claims shall be paid in the event of bankruptcy, in the following order:

1. fees, stamp duties or other expenses related to the selling procedure established by law including the costs necessary for the conservation and management of the debtor's assets and payment/ remuneration of the judicial administrator/receiver or liquidator;
2. receivables resulting from financing facilities granted to the debtor in the period of observation (as part of the insolvency procedure) with the scope of performing its day to day business;
3. claims arising from the employment relationship;
4. claims resulting from the continuation of the debtor's activity after the commencement of the insolvency procedure as well as receivables owed to good faith third party owners that return their property over goods (or the money equivalent) to the debtor, when such return is made according to the insolvency law.
5. budgetary claims;
6. claims representing amounts owed by the debtor to others, based on maintenance obligations, allowances for minors or periodic payment amounts for ensuring livelihoods;
7. claims representing amounts fixed by the syndic judge for the necessities of the debtor and his family, if he is a natural person;
8. claims representing bank loans and interest expenses, the results from the supply of goods, services or other work, rent, lease contracts and bonds;
9. other unsecured claims;
10. subordinated debts in the following order of preference:

(i) receivables belonging to bad-faith third party owners of former goods of the debtor, as well as loans granted to a debtor, legal person, by a shareholder or stockholder holding at least 10% of the share capital, respectively of the voting rights in the general meeting of shareholders or, where appropriate, to a member of the economic interest group;
(ii) claims arising from gratuitous agreements.

6. Conclusion of insolvency procedure

Do cram-down procedures exist?

As mentioned above, the courts are compelled to refrain from ruling on commercial matters, being solely empowered to control the activity of the receiver and/or the liquidator.

How is the procedure formally concluded?

If during any phase of the insolvency proceedings one ascertains that there are not enough assets in order to cover all administrative costs and no creditor offers to make advance payments for this purpose, the syndic judge, after an emergency

hearing resulting in such refusal, will issue a judgment for the closing of the procedure, ruling also the removal of the debtor from the register where it is registered.

The reorganization procedure is closed by a court ruling based on the receiver's report, after the fulfilment of all payment obligations undertaken by way of the confirmed reorganisation plan.
The bankruptcy procedure is closed when the syndic judge has approved the final report, all of the debtor's funds and assets are distributed and the unclaimed funds are deposited with the bank. Further to an application from the liquidator, the syndic judge shall issue a ruling, closing the procedure and ordering the removal of the company from the relevant register.

What is the outlook for creditor classes?

As previously mentioned, the claims of the creditors enlisted in the final table of debts shall be paid in the order provided by the law. According to the Romanian law, the creditors from a lower category (the non-secured creditors) are entitled to satisfy their receivables against the insolvent company only after full repayment of the creditors of a hierarchically superior category. In the case of creditors having the same priority ranking, the amounts distributed shall be granted proportionally with the amount allocated for each debt in the final table of claims. As a consequence, low priority ranking creditors may be faced with the impossibility of recovering their debts.

7. Alternative forms of restructuring

Are there non-formal procedures available to the company?

No, the Romanian law permits only a judicial procedure of insolvency for entities reaching insolvency status.

Are there accelerated processes available?

We understand by "available accelerated processes" the direct entering into bankruptcy, which thus theoretically allows the termination of the proceedings within approximately 1 year. We have detailed above the cases where the insolvent company may be made subject to the simplified procedure.

8. International Interaction

What international framework of rules apply to the company?

Since the Romanian accession to the European Union ("EU") in 2007, the international private law aspects regarding insolvency are mainly regulated by the

Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings. The Regulation No. 1346/2000 establishes a common framework for insolvency proceedings in the EU. The purpose of harmonized arrangements regarding insolvency proceedings is to avoid assets or judicial proceedings from being transferred from one EU country to another in order to obtain a more favourable legal position to the detriment of creditors.

What is the approach of the company's jurisdiction in respect of recognition of foreign proceedings?

According to EC regulation no. 1346/2000, EU judgments opening insolvency proceedings are automatically recognized in Romania. Any other bankruptcy judgments issued by non-EU courts may be recognized by the Romanian courts as long as they are not incompatible with the EU and Romanian laws.