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Insolvency

Romania

Zamfirescu Racoți & Partners Attorneys at Law (ZRP)

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ROMANIA

LAW AND PRACTICE:

p.3

Contributed by Zamfirescu Racoți & Partners Attorneys at Law (ZRP)

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

Contributed by Zamfirescu Racoți & Partners Attorneys at Law (ZRP)

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Zamfirescu Racoți & Partners Attorneys at Law (ZRP) has 12 lawyers in its Insolvency department, active mainly in banking litigation and debt recovery. The team notably acts for banks in insolvency procedure cases, and for large companies involved in the recovery of receivables. It advises both debtors and creditors throughout the insolvency procedure, assisting and/or representing them in specific

claims and also in related actions, including objections to the decision of the creditors' meeting, measures ordered by judicial liquidators, annulment claims, objections to debt claims, liability claims submitted against former debtors' administrators, and fraud matters, etc. The team also has significant experience in debt recovery.

Authors



Stan Tîrnoveanu is a senior partner and one of the founders of Zamfirescu Racoți & Partners Attorneys at Law. He leads the Restructuring and Insolvency practice as well as the Banking Litigation practice.

Stan has more than 20 years' experience as an insolvency practitioner, with broad expertise in representing clients in insolvency and bankruptcy, debt recovery and dispute resolution matters. He acts for both creditors and debtors in the insolvency procedure, and covers a wide array of financing and funding transactions, trade finance facilities, collateral systems and credit securities issues.



Andreea Macașoi is specialised in civil and commercial litigation, with a focus on disputes in the area of insolvency, commercial contracts, real estate, expropriation, banking. She has a notable reputation for managing complex projects related to

the recovery of bad loans in insolvency and in enforcement proceedings, including cross-border mandates or mandates referring to the enforcement of shares owned by natural or legal persons. Further to her experience in the insolvency area, Andreea advises clients on insolvency matters of group companies, the legality of the reorganisation plan or the identification of the optimum methods for the recovery of secured receivables.

1. Market Trends and Developments

1.1 The State of the Restructuring Market

The number of companies that underwent insolvency procedures in 2017 was 3% larger than during 2016. However, a more careful consideration reveals this apparent increase to be misleading, since it was generated exclusively by an increase in the number of insolvent companies from among those which did not carry out any business activity. It is also notable that the number of companies that ceased their activity in 2017 was equal to the number of newly established companies.

In the first eight months of 2018, 5615 companies underwent insolvency procedures, compared with 5758 companies during the same period of 2017: a decrease of 2.48%.

At the level of credit institutions, in the first eight months of 2018 the rate of non-performing loans reached a quota of approximately 6%. The main result of this was that credit institutions, as endorsed institutional creditors, reduced their presence within insolvency procedures, and will keep reducing their weight.

Consequently, the main creditors involved in insolvency procedures are now the suppliers of the debtors undergoing insolvency, alongside budgetary creditors. This situation will affect supplier credit and lead to the dissipation of the body of creditors, which will encumber the decision-making pro-

cess within the assemblies of creditors – especially because it is already known that budgetary creditors never approve reorganisation plans.

Since suppliers will be more present within insolvency procedures, these changes will likely lead to a greater focus on restructuring and on the attempt at safeguarding the insolvent company, since this type of creditor will also be thinking about loss recovery by means of the future performance of the companies that are facing financial difficulties at present. Therefore, it is believed that in the future the general attitude towards votes on reorganisation plans will be more positive and the success rate of the restructuring procedures might increase. However, since supplier creditors represent quite a low individual weight among the total body of creditors, it will be difficult for them to form the critical majority of 30% of the total debts which would, according to Romanian law on insolvency, permit a reorganisation plan.

In 2018 an emergency ordinance passed at the initiative of the Ministry of Finance which significantly amended some articles of Romanian insolvency law. There are many questions regarding the constitutionality of this ordinance, since – under the apparent pressure of the necessity to increase budgetary incomes – the Ministry is introduced some institutions into the insolvency law which positively discriminate in favour of the fiscal agency as compared to other creditors, thus disregarding constitutional principles as well as UNCITRAL recommendations.

As a general observation on the emergency ordinance, can be said that the provisions are anomalous, many of them being taken over from the regulation of the fiscal code and introduced into insolvency law without taking the specifics of insolvency procedures into account.

From among these provisions, the introduction of a threshold value of RON40,000 for the initiation of the procedure should be noted, and the condition that if the debtor also has budgetary claims, the quantum of these budgetary receivables should be less than 50% of the total declared receivables, thus reaching a double threshold. This will most likely lead to the postponement of the submission of the application for the initiation of the insolvency procedure.

The same emergency ordinance introduces new criteria for the reorganisation of companies, with budgetary creditors and the treatment of budgetary receivables having a significant role in the chances for the approval and confirmation of a reorganisation plan. In this way, the introduction of additional conditions with regard to the approval of the reorganisation plan by budgetary creditors creates, again, positive discrimination which unreasonably encumbers the procedure for the approval of the reorganisation.

1.2 Changes to the Restructuring and Insolvency Market

With regard to the financing of companies undergoing insolvency, there were no significant changes in the last year, and lending to insolvent companies remained at a low level. However, that a good trend was preserved as far as the liquidation of the assets of insolvent companies is concerned.

2. Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

2.1 Overview of the Laws and Statutory Regimes

Currently, the insolvency procedure is regulated by a law (amended substantially in 2014) that provides for two procedures of redressing the solvable debtor's activity – namely, the ad hoc mandate procedure and the procedure of arrangement with creditors. The provisions of the special law are supplemented, in such a case, to the extent that they do not contravene the rules of the Civil Procedure Code and the Romanian Civil Code.

2.2 Types of Voluntary and Involuntary Financial Restructuring, Reorganisation, Insolvency and Receivership

The law provides, as a rule, for two procedures of redressing a debtor's activity outside of court: the procedure of ad hoc mandate, and the procedure of arrangement with creditors. In the case of a debtor in payment default, the law also provides for a judiciary procedure.

An ad hoc mandate is a confidential procedure by which an ad hoc proxy negotiates with the creditors in order to outbalance the state of difficulty in which the company finds itself.

An arrangement with creditors is an agreement concluded between the company in financial difficulty and the creditors holding at least 75% of the value of the accepted and untested receivables, by whom a plan for redress is proposed. The procedure is co-ordinated by an administrator.

The insolvency procedure may consist either of a simplified procedure, in which case the company enters into bankruptcy directly, or a general procedure, in which case the company may enter, after the observation period, into the reorganisation period (if there are chances of redressing and the creditors agree with the proposed measure) and, possibly (in case of the failure of a reorganisation plan or when such a plan is not proposed or not accepted), into bankruptcy.

2.3 Obligation to Commence Formal Insolvency Proceedings

Romanian law sets forth that an insolvent debtor is obliged to file a claim with the tribunal requesting that it be subject to the procedures provided for by the insolvency law within a maximum of 30 days from the occurrence of insolvency. This is defined as the point at which insufficient funds are available for the payment of the certain, liquid and exigible debts of more than 60 days. The minimum amount of these debts should be RON40,000.

2.4 Procedural Options

On the occurrence of insolvency, a company may request the initiation of a general procedure, followed, after the expiry of the observation period, by a reorganisation. Alternatively, it may request direct entry into bankruptcy.

2.5 Liabilities, Penalties or Other Implications for Failing to Commence Proceedings

If the debtor does not request the opening of the insolvency procedure, sanctions may include liability for the crime of simple bankruptcy. Alternatively, the statutory administrator may be obliged to incur the liabilities of the debtor, fully or partially, depending on each case.

2.6 Ability of Creditors to Commence Insolvency Proceedings

Any creditor holding a receivable higher than RON40,000 against a company that is unpaid in a term of at least 60 days from maturity may request the opening of the insolvency procedure against such company.

2.7 Requirement for Insolvency to Commence Proceedings

The insolvency state is a condition that must be met for requesting the opening of a procedure. It may be an already installed insolvency, or it may be an imminent insolvency.

The already installed insolvency is that state of the debtor characterised by the absence of available funds for the payment of certain, liquid and exigible debts of more than 60 days. The minimum amount of such debts must be RON40,000.

Insolvency is regarded as imminent when it is proven that the debtor will not, upon maturity of the exigible debts, have sufficient funds available to pay them.

2.8 Specific Statutory Restructuring and Insolvency Regimes

The provisions relevant to banks, commercial lenders and other credit institutions are the provisions of Law 85/2014 and Law 312/2015, which also regulate the procedure of redressing and restructuring credit institutions. Special supervision is ordered by the National Bank of Romania in its capacity as resolution authority.

With regard to the regime applicable to the insolvency of credit institutions, only some new aspects relating to the characteristics of the state of insolvency of the credit institution, the necessity of obtaining an approval prior to the opening of the bankruptcy procedure, and the protection conferred by the law of depositors in the banking system on the payment (made by the National Guaranteeing Fund are noted).

The provisions relevant to insurance companies and undertakings are the provisions of Law 503/2004 on financial redressing, bankruptcy, dissolution and voluntary liquidation in the activity of insurances, and Law 85/2014 on the procedures of prevention of insolvency and of insolvency.

The procedure of financial redressing ('pre-bankruptcy' procedure) exceeds court control and is overseen by the Financial Supervisory Authority.

In accordance with the legislation of the Romanian state, the financial redressing procedure produces its effects in the entire EU without other formalities, including in what regards third parties from other member states.

In what regards the administrative-territorial units, there are special provisions regulating the insolvency regime, namely Emergency Ordinance 46/2013 on the financial crisis and the insolvency of the administrative-territorial units.

The Insolvency Code (Law 85/2014) does not apply to the pre-university and university education units and research-development institutes, centres or units organised as public, or public law institutions. Hence, if they are national companies, Law 85/2014 shall apply, but if they are educational institutions, schools or medical institutions subordinated to the administrative-territorial units, then the applicable law is the Emergency Ordinance 46/2013.

3. Out-of-court Restructurings and Consensual Workouts

3.1 Consensual and Other Out-of-court Workouts and Restructurings

As an informal and consensual procedure for the prevention of insolvency, the Insolvency Code provides the procedure of the ad hoc mandate, which is characterised by negotiations between an ad hoc proxy and the debtor's co-contracting parties. However, the law does not provide specific rules for the conduct of the negotiations. Romanian legislation also regulates the arrangement with creditors, a less formal negotiation procedure that is described below.

In general, restructuring market participants and professionals place greater trust in the possibility of recovering receivables outside of insolvency procedures, ie, within an informal procedure. Nonetheless, the procedures of ad hoc mandates or arrangements with creditors are very rarely used in practice, with individual negotiations being preferred.

Banks and other financing institutions try to support companies in financial difficulty by the rescheduling of credit, etc. In the last period banks were more and more supportive of companies, given the rather slight possibilities for financiers to cover the entire receivable in the insolvency procedures.

Romanian law does not make an obligation for prior procedures to be followed before the filing of a claim for the prevention of insolvency or of insolvency. Neither does it require mandatory consensual restructuring negotiations before commencement of a formal "statutory process."

If a company is in a state of insolvency, its directors must address the tribunal so that, after the opening of the procedure, any negotiation with creditors can only be made through the reorganisation plan.

3.2 Typical Consensual Restructuring and Workout Processes

The use of consensual 'standstills' and credit agreement default waivers as part of an initial informal and consensual process is not excluded, and credit institutions use these types of conventions with their debtors.

Having in view that such informal understandings are not mandatory, but are left to the choice of the debtor/creditors to opt for them, the law does not provide for any particular obligations incumbent on them.

Usually, in the ad hoc mandate procedure and in that of the arrangement with creditors, no committee or representative of the creditors is appointed, although no such appointment is forbidden. For the appointment of one or more representatives the common law rules of the mandate apply, but most of the time there is no such appointment.

The appointment of remunerated proxies of the creditors is not forbidden, but, as a rule, negotiations are conducted with the main creditors individually. The administrators in arrangements with creditors or the ad hoc proxy receive a remuneration from the debtor.

There are no criteria for the determination of a committee or of co-ordinators.

Usually, in procedures for the prevention of insolvency, prior to the opening of the procedure itself, the creditors are given the necessary information in order for them to assess the chances of redressing and of payment of the receivables according to the assumed obligations.

No guarantee may be changed in such a procedure, except with the consent of the guaranteed creditor.

3.3 Injection of New Money

It is possible to invest in a company in insolvency with the benefit of a super-priority. There is no special regulation for this in the procedures for the prevention of insolvency, namely ad hoc mandates or arrangement with creditors, but the parties may conclude a convention in this regard.

3.4 Duties of Creditors to Each Other, or of the Company or Third Parties

Romanian legislation contains no regulation regarding the duties of creditors to each other, or of the company or third parties. However, specialised doctrine has started to talk rather timidly about a possible abuse of majority. Still, there are no judiciary precedents in this regard.

3.5 Consensual, Agreed Out-of-court Financial Restructuring or Workout

If a reorganisation plan is voted on validly, as we shall describe below, certain clauses from the credit agreements may be amended.

‘Cramdown’ is not a practice in Romania. Usually, in our jurisdiction, debtors may propose their own reorganisation plan. Nevertheless, there may be situations in which a reorganisation plan is confirmed if it meets the double threshold of being voted for by creditors accounting for at least 30% of the total amount of the receivables, and also being accepted by a majority of the categories of creditors, as detailed below.

4. Secured Creditor Rights and Remedies

4.1 Type of Liens/Security Taken by Secured Creditors

Romanian legislation regulates the following types of collateral and privileges: immovable mortgage, movable mortgage (including on the accounts and receivables or on the movable assets), special privileges, pledge and retention right.

4.2 Rights and Remedies for Secured Creditors

Secured creditors benefit from adequate protection in the insolvency procedure, having special prerogatives. As a rule, all judicial and extra-judicial actions, as well as individual enforcement measures, are suspended from the date of the opening of the insolvency procedure.

Nonetheless, as an exception stipulated in favour of the secured creditors, these are permitted to request the lifting of the measure of suspension and the immediate sale of the asset affected by the guarantee.

The amounts obtained from the sale of the assets affected by the guarantee will be distributed with priority given to the creditors whose receivable is secured with such assets, these at the same time being permitted (unlike the other creditors) to calculate and also to charge accessories to the principal, including after the date of opening of the insolvency procedure.

4.3 The Typical Timelines for Enforcing a Secured Claim and Lien/Security

The period in which a secured receivable can be satisfied may vary very much on a case-by-case basis. In certain conditions provided for by the law, secured creditors may request the rapid enforcement of their guarantees by the courts.

4.4 Special Procedures or Impediments That Apply to Foreign Secured Creditors

Foreign secured creditors have the same rights as all the other creditors in this category.

4.5 Special Procedural Protections and Rights for Secured Creditors

Secured creditors have the right of preference and of priority to the satisfaction of their receivable from the amounts obtained as a result of the turning to account of their guarantees, and have a special voting right when the reorganisation plan is voted on. At the same time, they may also calculate interests after the date of opening of the procedure, if the value of the asset affected by the guarantee allows it. Another specific right of the secured creditors is the possibility of individual enforcement of the assets affected by their guarantee, in certain conditions provided by the law – especially when such asset is not essential for a reorganisation plan.

5. Unsecured Creditor Rights, Remedies and Priorities

5.1 Differing Rights and Priorities Among Classes of Secured and Unsecured Creditors

Secured creditors mainly have the rights described in 4 **Secured Creditor Rights and Remedies**, above. Unsecured creditors have the right to vote in a distinct class when the reorganisation plan is discussed.

5.2 Unsecured Trade Creditors

As a rule, receivables held by the simple contract creditors may be reduced, both in the redressing procedures and in insolvency, by the reorganisation plan. In practice, in most insolvency procedures, the reorganisation plan provides for the satisfaction of these receivables by 50% or even 0%.

5.3 Rights and Remedies of Unsecured Creditors

In arrangement procedures, simple contract creditors have the right to agree with or oppose the redressing proposal. If they do not agree, the measures contained in the proposal may be opposed by them only in the case of an arrangement with creditors homologated by a court of law.

In insolvency, these creditors have a voting right over the adoption of the proposed reorganisation plan. If, by decision of all the creditors involved in the procedure, the reorganisation plan is approved, simple contract creditors may bring forward conclusions of invalidation of the plan in front of the court of law administering the insolvency procedure.

In the judicial reorganisation procedure, simple contract creditors may file a claim for bankruptcy if the receivables due to them are not paid according to the schedule of payments provided by the plan.

In the special situation in which simple contract creditors have concluded with the debtor a sale-purchase pre-agreement on an immovable asset, these creditors may file a request for the conclusion of the pre-agreements and transfer of the right of ownership over the immovable, without the asset being sold as part of the insolvency procedure (assuming certain specific conditions provided by the law have been met).

5.4 Pre-judgment Attachments

As a rule, precautionary measures ordered before the opening of the insolvency procedure cannot have an impact on the insolvency procedure.

Precautionary measures may be considered for determining the secured character of the receivable claimed by the creditor that established such a measure (on condition that certain expressly provided conditions have been met), without yet preventing the possibility of sale of the assets in the liquidation procedure.

An exception provided by the law refers to the existence of a movable mortgage on a cash collateral account of the debtor in insolvency, in which case the available funds will be released to the creditor based on a simple request made within the observation period.

5.5 Typical Timeline for Enforcing an Unsecured Claim

Individual enforcements are suspended by operation of the law when the insolvency procedure is opened against the debtor. Consequently, the simple contract creditor, similarly to the secured one, has the right to register the claimed amount with the body of creditors, within the term provided by the judgment for the opening of the insolvency procedure.

5.6 Bespoke Rights or Remedies for Landlords

Lessors do not benefit from special rights in the insolvency procedure, but they are assimilated by the law to the simple contract creditors. As a rule, the contractual clauses remain applicable and effective.

5.7 Special Procedures or Impediments or Protections That Apply to Foreign Creditors

Foreign simple contract creditors have the same rights as all the other creditors in this category.

5.8 The Statutory Waterfall of Claims

In bankruptcy, the distribution order is regulated by the law as follows:

- duties and any other procedure expenses, including the fee of the insolvency administrator/judicial liquidator;
- receivables deriving from financing granted during the procedure (super-priorities);
- receivables deriving from labour relations;
- receivables deriving from the continuation of the debtor's activity;
- budgetary receivables;
- receivables that the debtor must cover based on support obligations, allowances for minors or payment of periodical amounts destined to ensuring the means of existence;
- simple contract receivables; and
- subordinated receivables.

5.9 Priority Claims

In extra-judiciary procedures, there is no prioritisation of the receivables.

In the judiciary procedure of insolvency, with reference to the indicated categories, the law establishes the following satisfaction order:

- duties and any other procedure expenses, including the fee of the insolvency administrator/judicial liquidator;

- receivables deriving from financing granted during the procedure (super-priorities);
- receivables deriving from labour relations;
- receivables deriving from the continuation of the debtor's activity; and
- budgetary receivables.

5.10 Priority Over Secured Creditor Claims

In insolvency, the expenses and duties of the procedure, as well as the financing granted during the procedure, have priority over the secured receivables. After these two categories of receivables, the secured creditors are the first to be satisfied from the sale of the assets under their guarantee.

If, from the price obtained in the sale, the receivable of the secured creditor is not covered, then the uncovered difference will be registered in the category of simple contract receivables. The secured creditor will be satisfied for this difference after the salary and the budgetary receivables.

6. Statutory Restructurings, Rehabilitations and Reorganisations

6.1 The Statutory Process for Reaching and Effectuating a Financial Restructuring/ Reorganisation

In respect of the reorganisation plan, the law provides for a voting modality distinct from the other decisions that the creditors make in the creditors' meeting. Each receivable benefits from a voting right that its holder exercises in the category of receivables of which such receivable is a part.

The following receivables represent distinct categories:

- the receivables benefiting from preference rights;
- salary receivables;
- budgetary receivables;
- the receivables of indispensable creditors; and
- the other simple contract receivables.

A reorganisation plan will be considered accepted by a category of receivables if, in the category of such receivables, the plan is accepted by creditors representing an absolute majority of the value of the receivables from that category. At the same time, a condition for the acceptance of the plan is that creditors representing at least 30% of the total value of the body of creditors votes for its approval.

The reorganisation procedure is initiated by the submission of a reorganisation plan within the term indicated by the law.

The reorganisation plan may be proposed by the debtor, by the insolvency administrator and/or by one or more creditors holding together at least 20% of the total value of the receivables contained by the final table.

The law does not exclude the possibility of the submission of several reorganisation plans, by category, although only one may be accepted by the creditors.

Reorganisation may be performed, for example, by one of the following means:

- the debtor maintaining full or partial management of its activity, including the right of disposal of the assets from its estate, with the supervision of its activity by the insolvency administrator;
- obtaining financial resources to support the achievement of the plan (the financing approved by the plan benefiting from priority at restitution);
- transmission of all or some of the assets from the debtor's estate to one or several natural or legal persons, established prior to or after the confirmation of the plan;
- the debtor's merger or division, in the conditions of the law;
- liquidation of all or some of the assets of the debtor's estate, separately or en bloc, free of any encumbrances, or their being given in payment to the debtor's creditors (with the consent of such creditors) on the account of the receivables that these have against the debtor's estate;
- partial or total liquidation of the debtor's asset for the execution of the plan (the amounts of money obtained after the sale of certain assets that are the object of guarantees must be distributed to the creditors holding such guarantees);
- the change or termination of the guarantees, with the mandatory granting of a guarantee or equivalent protection to the benefit of the holding creditor, up to the value of their receivable, including the interests established according to the agreements or according to the reorganisation plan, based on an assessment report;
- prolongation of the maturity date, as well as the change of the interest rate, of the penalty or of any other clause from the agreement or of the other sources of its obligations; or
- change of the debtor's articles of incorporation.

From the point of view of the financial condition of the debtor, the plan must comprise a projection of the cash flow that would allow for the execution of the measures proposed by the plan. In terms of viability, the creditors decide in principle, and then the court of law may resort to a neutral insolvency practitioner that would express a point of view on the possibilities of the plan's achievement.

In principle, the reorganisation plan may be proposed after the general insolvency procedure has been opened against the debtor. Subsequently, at the end of the observation period, after the completion of the body of creditors, any of the persons enumerated above may propose a reorganisation plan.

If this is accepted by the creditors, the syndic judge will analyse the legality of the plan and, if all conditions are met,

will confirm reorganisation. From that moment, the debtor enters into the reorganisation procedure, its activity being conducted according to the provisions of the plan.

A necessary and imperative condition provided by the law is the correct and fair treatment of the receivables, so that all receivables must, in reorganisation, receive at least as much as they would have received in bankruptcy.

The main purpose of the reorganisation plan is the company's redressing, the covering of as high as possible a percentage from the body of creditors and subsequently the company's reinsertion in the economic circuit, which can obviously have numerous benefits, including of a social nature by means of the protection of jobs.

Following the confirmation of a reorganisation plan, the debtor will conduct its activity under the supervision of the insolvency administrator, the court following only to solve certain aspects of which it is notified and that are related to the legality of the measures and of the means of execution of the plan.

As previously mentioned, the reorganisation procedure starts at the date of confirmation of the plan as voted on by the creditors in a court of law.

Romanian law does not provide for a distinct expedited procedure, but it does allow that a reorganisation plan may be executed within a maximum of three years, with the possibility of prolongation up to a maximum of four years. However, if the debtor's activity allows it, the plan may last for any period shorter than three years.

The claims for current receivables are analysed by the insolvency administrator, which offers a point of view. If there are disputes with regard to the claimed receivable, the interested creditor may address the court of law.

The reorganisation plan validly voted for by the creditors is also mandatory for the creditors who have not expressed a point of view.

The reorganisation plan is public, may be analysed by each creditor, is submitted to the case file and to the trade registry and is usually also accessible online. Nonetheless, the plan must not contain detailed remarks regarding the conduct of the economic activity, nor disclose the trade secrets of the company.

The plan may be challenged with the syndic judge when the court discusses the confirmation of the plan. The creditors' use of this mechanism does not imply the filing of a separate challenge. For non-legality reasons, however, the interested party may separately challenge the decision of the creditors' meeting to approve the plan.

The plan is voted on by the creditors on the conditions presented above, and subsequently confirmed by the court. The receivables to be paid will be paid according to the schedule of payments, which is a mandatory annex of any reorganisation plan. At the moment of payment of all the receivables provided by the schedule of payments, the reorganisation procedure may be closed, and the company re-enters into the economic circuit.

6.2 Position of the Company During Procedures

From the date of the opening of the procedure pursuant to the law, all judiciary, extra-judiciary actions or enforcement measures for the satisfaction of the receivables against the debtor's estate are suspended. From this point on they may only be turned to account in the insolvency procedure.

The company can continue to operate its business after the date of opening of the procedure, normally under the supervision of the insolvency administrator. In cases in which the court orders the lifting of the administration right, the management of the company passes to the insolvency administrator.

After the procedure opening date, the shareholders of the debtor are summoned to elect a special administrator. This will be the only entity to administer the company, under the supervision of the insolvency administrator.

In the observation period and during the reorganisation period, the debtor can obtain financing through direct negotiation with the financier and through the approval of the loan conditions by the creditors.

6.3 The Roles of Creditors During Procedures

From the moment of preparation of the preliminary table, the creditors are registered by categories of receivables, namely the receivables benefiting from preference rights, salary receivables, budgetary receivables and simple contract receivables.

The creditors convene in a general meeting of creditors, of which all creditors are part. If there is a large number of creditors, a creditors' committee of three or five members can be elected, chosen in the creditors' meeting from those who manifest their intention to be part of the committee, and in the order of the receivables, from the larger ones to the smaller ones, so that each category of creditors is represented. The expenses are incurred by each creditor, these not being settled by the debtor.

Creditors have access to all the information brought to their knowledge by the insolvency administrator by means of its activity reports. These activity reports and the quarterly financial statements prepared in the reorganisation procedure are published in the Insolvency Procedure Bulletin. They are submitted to the case file and are communicated to the credi-

tors present in court at the control hearings. The quarterly financial statements prepared in the reorganisation procedure are approved by the creditors' committee.

6.4 Modification of Claims

The receivables of a particular class of creditors may be modified through the reorganisation plan, even if the creditors in question voted against the plan. The only conditions are that the categories be treated fairly, and that they should not receive less in the reorganisation procedure than they would have received in the bankruptcy procedure.

6.5 Trading of Claims

Claims may be traded without any approval from other parties except those involved in the assignment of the receivable. The transfer will be effective and recognised once it is notified to the debtor and to the judicial administrator.

6.6 Using a Restructuring Procedure to Reorganise a Corporate Group

A restructuring procedure may not be utilised to reorganise a corporate group on a combined basis for administrative efficiency, but different types of M&A operations can be performed within a reorganisation procedure.

6.7 Restrictions on the Company's Use of or Sale of Its Assets During a Formal Restructuring Process

If the reorganisation plan is accepted by the creditors and confirmed by the judge, then the assets may be sold according to the provisions of the reorganisation plan.

6.8 Asset Disposition and Related Procedures

The activity of the debtor is run by the special administrator appointed by the shareholders, under the supervision of the judicial administrator.

The assets sold in the insolvency procedure are free and clear of any claims.

The creditors can participate in the auctions and under some conditions they can bid with their own receivable.

During a restructuring proceeding, it is possible to effectuate sales and similar transactions that have been pre-negotiated, provided that these transactions are incorporated within the reorganisation plan that was accepted by the creditors and confirmed by the judge.

6.9 Release of Secured Creditor Liens and Security Arrangements

No changes to the liens and security arrangements of a secured creditor can be made unless the creditor approves it or if the contractual conditions for releasing those securities are met.

6.10 Availability of Priority New Money

New money investment or loans can be secured by assets of the company that are free of any liens and securities.

6.11 Statutory Process for Determining the Value of Claims

It is not possible to use the statutory process as a forum for determining the value of claims and those creditors with an economic interest in the company.

6.12 Restructuring or Reorganisation Plan or Agreement Among Creditors

A restructuring or reorganisation plan or agreement among creditors that emerges is subject to an overall 'fairness' test. In order for it to be effective, the creditors should accept the plan and the court must confirm it.

6.13 The Ability to Reject or Disclaim Contracts

The company or a statutory office-holder may reject or disclaim contracts. The effects of this on the parties are the same as they would be for any other contract rejected or disclaimed by a company that were not subject to a insolvency procedure.

6.14 The Release of Non-debtor Parties

Any kind of operations that can release non-debtor parties from liabilities must be included in the reorganisation plan, which should be accepted by the creditors and confirmed by the judge in order for it to become effective.

6.15 Creditors' Rights of Set-off, Off-set or Netting

The law provides expressly for the fact that the opening of the insolvency procedure does not affect the right of any creditor to invoke the set-off of its receivable with that of the debtor against it, when the conditions provided by the law in the matter of legal set-off are met at the procedure opening date.

In respect of the netting agreement, the law does not forbid the conclusion of such an agreement, but it requires that certain specific conditions be met.

6.16 Failure to Observe the Terms of an Agreed Restructuring Plan

If the debtor company fails to fulfil its obligations, the bankruptcy procedure will be declared. The creditors usually do not have a direct implication in the restructuring plan.

6.17 Receive or Retain Any Ownership or Other Property

Existing equity owners cannot receive or retain any ownership or other property on account of their ownership interests unless all the other debts are paid.

7. Statutory Insolvency and Liquidation Proceedings

7.1 Types of Statutory Voluntary and Involuntary Insolvency and Liquidation Proceedings

Romanian law provides procedures for the prevention of insolvency, such as the ad hoc mandate and agreement with creditors, and insolvency procedures for professionals, administrative and territorial units and natural persons.

There is a distinction between the simplified procedure (where the debtor enters directly into bankruptcy) and the general procedure (which consists in the observation period and the subsequent entering into the reorganisation procedure if a reorganisation plan is confirmed and, as the case may be, into bankruptcy if the reorganisation plan fails). The main advantages of the reorganisation procedure are the increase in the degree of satisfaction of the creditors, as well as the saving of the business and of the jobs.

An insolvency procedure may be opened by a court of law at the debtor's request (voluntary) or at the request of one or several creditors (involuntary). In the case of the procedures for prevention of insolvency, the request may be filed by the debtor.

Bankruptcy is ordered either at the same time as the opening of the procedure – if specific conditions provided by the law for the simplified procedure are met – or after an observation period, as a result of exceeding the term for proposal of the reorganisation plan or as a consequence of the failure of the plan.

The debtor may initiate the insolvency procedure if the insolvency state is imminent, but it must initiate such a procedure if it is in insolvency, having certain, liquid and exigible receivables of over RON40,000 and older than 60 days.

One or more creditors may also file a claim for the opening of the procedure if these hold a certain, liquid and exigible debt against the debtor higher than RON40,000 and older than 60 days, and the debtor is in payment default.

For professionals, the court may order direct entry into bankruptcy, without any observation period, if the company has not presented accounting documents, if it has been previously dissolved, if the administrator cannot be found or if the registered office no longer exists or no longer corresponds to the address mentioned in the public registries.

If the general procedure is opened and the observation period is conducted, bankruptcy may be ordered if a reorganisation plan is not submitted within the term provided by the law or if such a plan was proposed, but has not been observed.

Receivables are calculated with reference to the date of opening of the procedure, in the national currency. Creditors submit statements of receivables to the court and to the insolvency administrator/judicial liquidator. Recognition and verification of the receivables will be performed by the insolvency administrator/judicial liquidator. Only those receivables that have arisen prior to the date of opening of the insolvency procedure will be registered with the body of creditors. The debtor, the creditors or any other interested party may challenge the preliminary table of receivables (prepared by category of receivables).

After entering into bankruptcy, creditors may request that receivables that have arisen after the opening date of the insolvency procedure (but before the date when it entered into bankruptcy) be registered with the body of creditors.

The insolvency procedure starts on the date when a court of law delivers the court decision for the opening of the procedure and appoints an insolvency administrator/judicial liquidator. The bankruptcy procedure starts on the date when a bankruptcy court decision is delivered.

In the insolvency procedure, there are specific terms regulated by law, of which we enumerate: a term for the submission of the statement of claim (a term established by the court decision for the opening of the procedure), and the term of one year established for the observation period. Regarding the expedited procedures, the insolvency law regulates the simplified procedure by which the debtor enters directly into bankruptcy, provided that certain requirements are met.

Receivables may be assigned on the conditions provided by the Romanian Civil Code; notification of any such assignment will be made to the Electronic Archive for Security Interests in Movable Property for opposability.

The law provides for the suspension of all judiciary or extra-judiciary actions or enforcement measures for the realisation of the receivables against the debtor's estate. All enforcements against the debtor shall be suspended by operation of law.

If the lifting of the administration right has not been ordered, the debtor may operate its own business. In this case, the insolvency practitioner supervises the current operations, and for the operations exceeding the current business it is necessary to have the approval of the creditors' committee. If the lifting of the administration right has been ordered, then the business is managed directly by the insolvency practitioner, and the debtor no longer holds control.

Once the debtor is in bankruptcy, the judicial liquidator is in control of the entire business.

The insolvency administrator may maintain or unilaterally terminate ongoing agreements. The co-contracting party is, in the case of unilateral termination of the agreement, entitled to indemnities, the indemnity mechanism not being very clearly regulated.

The law provides expressly for the fact that the opening of the insolvency procedure does not affect the right of any creditor to invoke the set-off of its receivable with that of the debtor against it, if the conditions provided by the law in the matter of legal set-off are met at the procedure opening date.

Regarding the netting agreement, the law does not forbid the conclusion of such an agreement, but it requires that certain specific conditions be met.

An insolvency procedure is characterised by transparency. Insolvency practitioners must submit monthly reports to the case file on, in essence, the debtor's business and the payments made, as well as publishing such reports in the Insolvency Procedure Bulletin.

In the reorganisation period, the amounts obtained will be distributed according to the confirmed reorganisation plan. In bankruptcy, the amounts obtained from the sale of the debtor's assets are distributed in compliance with the legal order depending on the categories of creditors. In total, there are ten categories:

- procedure expenses and duties;
- credits granted after the opening of the procedure;
- salaries;
- current receivables arising after the procedure opening date;
- budgetary receivables;
- support obligations or allowances;
- amounts necessary for the support of debtor's natural person and family;
- bank credits, deliveries of products, provisions of services, rents;
- other simple contract receivables; and
- subordinated receivables.

The procedure is closed either when the reorganisation plan has been executed or when there are no longer any assets to be sold.

7.2 Distressed Disposals as Part of Insolvency/Liquidation Proceedings

Procedures for the sale of assets or the business are authorised by the creditors' meeting, and negotiated and executed by the insolvency practitioner. If the debtor's right of administration has not been lifted, then the sale is performed by the special administrator under the supervision of the insolvency administrator.

A purchaser of assets sold in such a procedure does acquire good title, 'free and clear' of claims and liabilities asserted against the company. However, in principle, the sale does not change the quality of the ownership. More exactly, it does not strengthen the title if there is any flaw.

Secured or unsecured creditors may bid for the company's assets. The law even allows the adjudication of the assets on the account of the receivables, provided that the preference order set forth by the law is complied with.

It is possible to effectuate pre-negotiated sales transactions following the commencement of a statutory procedure.

7.3 Implications of Failure to Observe the Terms of an Agreed or Statutory Plan

Failure to fulfil the obligations assumed by the reorganisation plan results in the debtor's entering into the bankruptcy procedure, characterised by the liquidation of its patrimony, followed by the company's dissolution and deregistration.

7.4 Investment or Loan of Priority New Money

Financing is possible both before the reorganisation period and as part of the debtor's reorganisation plan, in which case the financier is granted a super-priority.

7.5 Insolvency Proceedings to Liquidate a Corporate Group on a Combined Basis

Law 85/2014 regulates the insolvency of groups of companies, there being specific regulations for this procedure.

7.6 Organisation of Creditors

Creditors are divided into five classes, namely:

- secured;
- salary;
- budgetary;
- simple contract receivables of the suppliers important for the debtor's activity; and
- the other simple contract receivables.

In the procedure there is a creditors' meeting, formed of the creditors registered with the body of creditors. The creditors' meeting votes on a creditors' committee formed of three or five creditors from the first 20 creditors, depending on the value of the receivables. This creditors' committee has powers and duties of representation of the creditors, the activity of the members of the committee not being remunerated.

7.7 Conditions Applied to the Use of or Sale of Assets

It is possible to sell assets during insolvency proceedings, with the prior approval of the creditors' meeting being necessary. The assets may be used or leased, the conditions required by the law being different depending on how these are used in the conducting of current business or on whether

they exceed the current business and, respectively, if the assets are or are not free of encumbrances.

8. International/Cross-border Issues and Processes

8.1 Recognition or Other Relief in Connection with Foreign Restructuring or Insolvency Proceedings

A foreign procedure may be recognised in Romania if the following certain conditions are met:

- the foreign procedure must be a collective, public procedure in which the assets and the activity of the debtor are subject to the control or supervision of a foreign court;
- the person who requests the recognition of the foreign procedure must administer the reorganisation or the liquidation of the debtor's assets and activity or act as a representative of the procedure; and
- there must be reciprocity regarding the effects of the foreign decisions between Romania and the state that delivered the decision by which the foreign procedure was opened.

8.2 Protocols or Other Arrangements with Foreign Courts

All reciprocity agreements concluded between Romania and other states also apply to the insolvency procedures. Internal legislation includes regulations regarding cross-border insolvency.

8.3 Rules, Standards and Guidelines to Determine the Paramountcy of Law

Depending on the date of opening of the procedure, the provisions of EC Regulation 1346/2000 or of Regulation 848/2015 on insolvency procedures are applicable.

8.4 Foreign Creditors

There is no differentiated treatment for foreign creditors in procedures of insolvency or prevention of insolvency that are opened in the territory of Romania.

9. Trustees/Receivers/Statutory Officers

9.1 Types of Statutory Officers Appointed in Proceedings

The administrator in an arrangement with the creditors, the ad hoc proxy or the insolvency administrator/judicial liquidator are appointed from the insolvency practitioners. In a procedure of insolvency of a natural person, the following may be appointed as liquidators: insolvency practitioners, court enforcement officers, attorneys at law and/or notaries.

9.2 Statutory Roles, Rights and Responsibilities of Officers

The ad hoc proxy is appointed for the identification of solutions for reaching an understanding with the creditors. The administrator in an arrangement with the creditors prepares the creditors' table and elaborates, together with the debtor, the arrangement project that would provide for the restructuring of the debtor's business. The insolvency administrator prepares the creditors' table, supervises the insolvency procedure and prepares monthly activity reports in which he presents the debtor's activity or, as the case may be, directly controls whether the debtor's administration right has been lifted. The insolvency administrator may propose a reorganisation plan, may unilaterally terminate the ongoing agreements, and/or may appoint specialists in the procedure. The judicial liquidator manages the debtor's activity and directly administers the procedure of liquidation of the assets.

9.3 Selection of Statutory Officers

In the insolvency of professionals, the insolvency administrator/judicial liquidator is appointed by the creditors and confirmed, subsequently, by a court of law. The practitioner is appointed from those who have submitted an offer to the case file, depending on the complexity of the procedure, expertise and capacity to administer the procedure concretely. In the insolvency of natural persons, the appointment is aleatory.

9.4 Interaction of Statutory Officers with Company Management

The insolvency administrator has powers and duties of supervision of the debtor's activity, supervising the managers and the management. If the lifting of the administration rights has been ordered, then the management of the company belongs to the insolvency administrator, this having all the powers and duties.

9.5 Restrictions on Serving as a Statutory Officer

The law regulates several hypotheses in which an insolvency practitioner may not fulfil the role of insolvency administrator/judicial liquidator. In essence, these refer to situations in which the practitioner has had prior relations with the debtor during a period of two years prior to the opening of the insolvency procedure. Also, an insolvency practitioner who is a former judge may not be appointed as administrator/liquidator in the area of the court of law in which he has been active during the past three years.

Creditors, statutory administrators or managers may not be appointed as insolvency administrators/liquidators of a company.

In order for a person to function as an insolvency practitioner, the law states that they must have completed long-term higher-education studies in law or economic sciences, and have at least three years' experience in the legal or economic

area. Authorisation for them to act as an insolvency practitioner is also required.

10. Advisers and Their Roles

10.1 Types of Professional Advisers

The law provides for the possibility of specialists' engagement in the insolvency procedure. These include advisers, experts, valuers, attorneys at law, archiving firms etc.

The insolvency administrator/judicial liquidator may hire specialised persons, their fee being subject to the approval of the creditors' committee and paid from the debtor's estate.

10.2 Authorisations Required for Professional Advisers

Specialised persons who are appointed must have the authorisations required by the law in the contemplated area.

Even if their appointment is approved by the creditors' committee, the specialised persons have an obligation to and are held accountable by the insolvent company.

10.3 Roles Typically Played by the Various Professional Advisers

Attorneys at law provide legal assistance and representation services; experts issue specialised opinions; valuers prepare the valuation reports regarding the value of the debtor's assets; the archiving company deals with the archiving of the company's documents, etc.

11. Mediations/Arbitrations

11.1 Use of Arbitration/Mediation in Restructuring/Insolvency Matters

Arbitrations or mediations are not utilised in restructuring, liquidation, insolvency or administration matters in Romania, but mediators may be retained for the debtor as specialists in the insolvency procedure.

11.2 Parties' Attitude to Arbitration/Mediation

Insolvency procedures are not subject to arbitration. Although one may retain a mediator for mediating various conflicts occurred in the insolvency procedure, in practice this does not happen.

11.3 Mandatory Arbitration or Mediation

Romanian insolvency law does not provide for mandatory arbitration or mediation in a judicially supervised insolvency or restructuring proceeding.

11.4 Pre-insolvency Agreements to Arbitrate

Romanian law does not provide for pre-insolvency agreements to arbitrate disputes. Certain agreements may contain

an arbitration clause in such contractual relation, but not in relation to insolvency.

11.5 Statutes That Govern Arbitrations and Mediations

Romanian legislation contains regulations regarding arbitration and mediation, but there are no specific regulations in the matter of insolvency.

11.6 Appointment of Arbitrators/Mediators

If the insolvency administrator considers it necessary to retain a mediator in the insolvency procedure, then the consent of the creditors' committee may be requested for the appointment and establishment of the mediator's fee.

There are no special regulations in insolvency law regarding the appointment of a mediator. Anybody who is authorised as a mediator may be hired for the debtor in the insolvency procedure.

12. Duties and Personal Liability of Directors and Officers of Financially Troubled Companies

12.1 Duties of Officers and Directors of a Financially Distressed or Insolvent Company

The managers have obligations to the insolvent company according to their functioning status. The manager, or any other person who has contributed to the occurrence of the insolvency state, may be held responsible to the creditors if the court makes a decision stating their liability.

The existence of the state of insolvency is determined by the syndic judge when the opening of the procedure is ordered. Subsequently, the first report prepared by the insolvency administrator/judicial liquidator describes the state of the company and the causes that have generated the insolvency.

The managers of the company do not have a direct relationship with the creditors, but with the debtor.

The managers are held liable for the activity they have performed. The managers, as well as any other persons who have contributed to the company's insolvency, are responsible to all creditors for the state of insolvency.

The obligations assumed by bylaws/agreement by the owners/shareholders/company affiliates/subsidiaries are maintained, in principle, including after entry into insolvency.

The manager or any other person who has contributed to the occurrence of the insolvency state may be made responsible to the creditors. The law concretely provides the cases that may entail the personal responsibility of these persons in

order to cover the receivables of the creditors registered with the body of creditors.

Directors can be subject to other sanctions under applicable criminal or civil law or pursuant to disqualification or other similar proceedings, subject to the conditions provided above.

12.2 Direct Fiduciary Breach Claims

Creditors may request the entailing of the direct liability of the persons who have caused the insolvency state.

12.3 Chief Restructuring Officers

Romanian companies do not typically appoint chief restructuring officers or other restructuring professionals.

12.4 Shadow Directorship

There is no concept of shadow directorship in Romania.

12.5 Owner/Shareholder Liability

Owners/shareholders are potentially liable to creditors if they have contributed indirectly to the management of the company and have caused the entry into the insolvency procedure.

13. Transfers/Transactions That May Be Set Aside

13.1 Grounds to Set Aside/Annul Transactions

Romanian law concretely provides for several situations in which transactions concluded before the opening of the insolvency procedure may be annulled if they have disadvantaged the debtor. The law mentions:

- gratuitous transactions;
- operations in which the services offered by the debtor are obviously disproportionate;
- transactions concluded with the intention of stealing assets from the debtor's estate or of hiding or delaying the insolvency state;
- anticipated payments of exigible debts after the date of opening of the procedure;
- transfer of ownership of assets in order to pay off a debt of the creditor at a higher value than the creditor could obtain in the bankruptcy procedure; and
- transactions by which a preference is created in favour of a simple contract creditor.

The law also provides for the possibility of annulment of transactions concluded up to two years before the opening of the procedure with a person who had shareholdings or controlled the company, or with a co-owner of a common asset.

13.2 Look-back Period

As a rule, transactions and operations concluded up to two years before the date of opening of the insolvency procedure are subject to verification.

13.3 Claims to Set Aside or Annul Transactions

Claims for annulment of transactions may be filed by the insolvency administrator, the creditors' committee or by a creditor representing more than 50% of the total body of creditors.

Such claims may be filed in both restructuring and insolvency proceedings.

14. Intercompany Issues

14.1 Intercompany Claims and Obligations

The law provides for equal treatment of all creditors, there being the principle of set-off of the mutual receivables at the date of opening of the insolvency procedure.

14.2 Off-set, Set-off or Reduction

Intercompany claims may be set-off if, at the date of the opening of the insolvency procedure, the conditions provided by the Civil Code for set-off were met. The conditions do not differ for intercompany claims or receivables held by other creditors.

14.3 Priority Accorded Unsecured Intercompany Claims and Liabilities

The treatment of unsecured intercompany claims is similar to the treatment applicable to any other receivable.

14.4 Subordination to the Rights of Third-party Creditors

As a rule, intercompany claims are not treated differently to others. Nonetheless, if the receivable is held by a company holding joint control with the debtor, then the receivable will be registered in the category of the subordinated receivables and it will be satisfied after the other classes.

14.5 Liability of Parent Entities

In principle, a parent company will be liable only if it has contributed to the state of insolvency of the subsidiary.

14.6 Precedents or Legal Doctrines That Allow Creditors to Ignore Legal Entity Decisions

There is incipient doctrine relating to the possibility of creditors asserting their claims against affiliates of an insolvent company, but in practice it is still rather difficult for them to do so.

14.7 Duties of Parent Companies

A parent company owner is held liable for the debts of the subsidiary only if it is proven that it has contributed to the occurrence of the insolvency state.

14.8 Ability of Parent Company to Retain Ownership/Control of Subsidiaries

In principle, a parent company may not retain ownership and control of its insolvent subsidiary during a restructuring or insolvency process. The procedure is controlled by the creditors. Still, the shareholders of the company in insolvency may appoint a special administrator to manage the debtor's activity. In the absence of serious irregularities in the management of the company's business, the special administrator will only be supervised by the insolvency administrator/judicial liquidator during the observation period and reorganisation (but not the bankruptcy procedure).

15. Trading Debt and Debt Securities

15.1 Limitations on Non-banks or Foreign Institutions

Movement of debt is mostly an activity that does not require special conditions to be met, either regarding the parties to the trade of debt or the characteristics of the object of the transfer. General requirements regarding the power of contract of the parties apply (full capacity of exercise; the capacity to enter into patrimonial relationships). Corporate limitations may apply in particular situations, if they are provided in the statutes of the traders that are legal entities or are based on the contractual relationships of the parties. Mortgage-secured loans having dedicated legislation as their basis may be traded only amongst financial institutions. Legal limitations regarding the acquiring or disposal of debt may become relevant in the case of insolvent companies.

15.2 Debt Trading Practices

Specially tailored contractual documents, adapted for each situation, are usually put in place for secondary market trading. Depending on the general activity of one of the parties, internally pre-drafted documentation may be used in relation with several other parties. Unless otherwise required by law, Romanian law is used as applicable law between the parties, allowing for the possibility to structure the documentation in a manner that borrows characteristics from sale-purchase and finance agreements.

Choice of mechanism is made by mutual agreement of the involved parties in accordance with the specifics of the transaction, taking into account the most convenient (from a legal standpoint and a fiscal or operational/logistic standpoint) and the most appropriate mechanism. Novation is a highly regarded mechanism, due to its flexibility, but the mechanism of assignment of receivable may also be opted for, as it

allows a transfer without any precedent formalities related to the assigned debtor.

Unless otherwise waived by the beneficiary parties or by the security documents (eg, autonomous securities), transfer of debts does not lead to dismissal of the initially associated securities.

Asymmetrical information may represent grounds for annulment of a debt trading transaction, especially if the unknown elements related to essential characteristics of the object of the transaction. The receiving party may choose not to enforce the possibility to request the ascertainment of the annulment of the transaction, yet third-party creditors of such party may, on their own, request the annulment on behalf of their debtor, if by the vitiated transaction a damage was suffered by their debtor-party at the transaction.

15.3 Loan Market Guidelines

For loans granted by banking financial institutions and non-banking financial institutions, guidelines are established by the National Bank of Romania. There have been no significant recent changes to these guidelines. It is forbidden to disclose details of loans that have been granted.

15.4 Enforcement of Guidelines

Romanian legislation regulates the obligation to keep professional secrets, including with regard to loans granted by banking institutions (the so-called 'banking secret'), as well as for financing granted by non-banking financial institutions.

15.5 Transfer Prohibition

The transfer of loan agreements may operate only with the consent of the contracting parties, in observance of the principle of *mutuus consensus*, *mutuus dissensus* when it also refers to banking services. However, when it refers to the assignment of credits, in principle there are no constraints.

15.6 Navigating Transfer Restrictions

Trusts or synthetic structures, or other transactional strategies, are not used to navigate transfer restrictions in Romania.

16. The Importance of Valuations in the Restructuring and Insolvency Process

16.1 Role of Valuations in the Restructuring and Insolvency Market

Valuation of the debtor's assets is mandatory in the judicial procedure of insolvency. The purpose of valuation is to ensure a balanced treatment of the creditors, with the value in view being the market value of the assets.

The market value of the assets is relevant on the occasion of proposal of the reorganisation plan for the correct representation of the simulation reorganisation/bankruptcy. Judicial reorganisation must ensure satisfaction at least equal to the one of bankruptcy and sale of the assets. In case of bankruptcy, the determination of the value of the assets is necessary for selling the assets by public auction.

16.2 Initiating Valuation

In the judiciary procedure valuation must be made by the insolvency administrator. The court may order the valuation ex officio or at the request of the creditors.

16.3 Jurisprudence Related to Valuations

In each insolvency procedure, the valuation of the assets is ordered. Romanian insolvency law provides for the possibility of the insolvency administrator and of any of the creditors filing objections to the valuation reports. Nevertheless, the case law in this matter is at an early stage.

A list of valuation experts is agreed by the Romanian National Association of Authorised Valuers. In principle, these experts' fee is paid from the debtor's estate.

Valuation is usually ordered by the insolvency administrator, but it can also be requested by the creditors or ordered ex officio by a court of law.

Any of the valuation methods provided by the International Valuation Standards may be utilised in order to prepare the valuation report and to identify market values. The insolvency law does not contain specific regulations with regard to the valuation methods.

The insolvency administrator does not make a distinct valuation outside the insolvency procedure, but orders the valuation in the judiciary procedure. Secured creditors have their own valuation of the assets affected by their guarantees and may challenge the valuation report prepared in the judiciary procedure by filing objections to the report. The preparation, in parallel, of an extra-judiciary valuation report by the creditors may be considered an opportune action for prudence reasons, and may facilitate the filing of objections to the judiciary report ordered by the insolvency administrator.

It is not necessary to undertake an M&A process or other form of market testing in order to meet legal requirements or mitigate valuation challenges. The valuation expert's determination of market value does not imply a valuation according to the M&A process.

The value determined as a result of the valuation must be achieved according to the International Valuation Standards and must reflect the market value in the likely conditions in which a sale would take place.

Only if there are no other comparison values is it possible and reasonable for liquidation values alone to be sufficient for the determination of market values.

Zamfirescu Racoti & Partners Attorneys at Law (ZRP)

12 Plantelor Street,
023974 Bucharest,
District 2,
Romania



Tel: +40 21 311 05 17 / 18
Fax: +40 21 311 05 19
Email: stan.tirnoveanu@zrp.ro
Web: www.zrp.ro